

**NOTE ON PAYMENT OF COMMUTATION DIFFERENTIAL ARISING OUT OF SUPREME COURT  
JUDGEMENT DATED 13.02.2018 IN THE MATTER OF 1616-16**

**SUPREME COURT OPERATIVE ORDERS IN THE MATTER 1616-1684**

While despoising of Civil Appeal No5525/2012 & others, Supreme Court passed the following operative orders:

- (a) Explanation (c) to Regulation No. 2(s) was struck down as it was found arbitrary and illegal and was inserted to take away accrued rights. Result of removal of this provision was that those retired between 01.4.1998 to 30.4.2005 became entitle to receive full benefits of pension in terms of Regulation No. 35 (computation of basic pension), Regulation No. 37 and its appendix (calculation of DR) and Regulation No. 41( Payment of Commutation ) from the date of retirement and not from 1.5.2005 as provided in settlement of 2005.
- (b) After striking down the above provision, Supreme Court ordered “ **Resultantly , let the amount due and payable be paid with 9 per cent interest, be calculated and paid within 4 months from today ( i.e. 13.02.2018)**”

**WHO ARE ELIGIBLE TO RECEIVE BENEFIT OF SUPREME COURT JUDGEMENT (ARREAR PAYMENT)**

- (a) All the pensioners who retired between 01.04.1998 to 30.4.2005.
- (b) Family pensioner, in case pensioners of the above category died before implementation of Supreme Court order.
- (c) Legal Heirs of the above category of pensioners in case pensioners and family pensioners both have died before implementation of the court order.

We find that banks have recognized this position and paid the arrears to eligible pensioners/ family pensioners/ legal hairs. If not done by any bank it is violation of Supreme Court judgment and calls for appropriate legal action.

**WHAT IS AMOUNT DUE AND PAYABLE AS PER THE SUPREME COURT JUDGMENT**

Amount due and payable as per the Supreme Court order will have to be determined as per the relevant provisions of Pension Regulations, 1995. Accordingly amount due and payable will be as under:

- (a) Recalculation of Basic Pension (after removal of explanation 2(c) to Regulation 2(s) ) as on date of retirement as per provisions of Regulation No. 35 and determine the difference.
- (b) To recalculate the DR on the revised basic pension and determine the difference.
- (c) To calculate the interest @ 9 per cent from date of retirement till the arrears as calculated above are actually paid
- (d) The above three amount will constitute amount due and payable.

We find that banks have since calculated amount due and payable as above and paid the arrears to the eligible pensioners. There is no dispute on the above.

**WHETHER COMMUTATION DIFFERENCE IS PART OF AMOUNT DUE AND PAYABLE AS SUPREME COURT JUDGMENT.**

Yes. Commutation difference arising due to revision in basic pension is part of “**Amount Due & Payable**” Banks are under obligation to calculate the commutation difference as per provisions of Regulation No. 41 and pay the same to eligible pensioners along with interest @ 9 per cent for delayed period.

While calculating arrears for commutation difference, the following points have to be adhered in compliance of the court order

- (a) Commutation difference will be part of the original payment availed at the time of retirement
- (b) There is no discretion to banks to refuse the payment of arrears because of delay of several years between original amount paid and difference being paid now.
- (c) The factor on which the difference will be calculated will be the factor applicable on the date of retirement and not the one applicable on date of actual payment.

We find of late some banks have started paying arrears for commutation difference to eligible pensioners and it is observed that calculation for arrears have been done after taking in to account the above points. In view of this, we find that there is no dispute on calculation of commutation difference.

**EXAMPLE**

One person retired from the bank on 1.1.2000 after attending age of 60 years

As per Supreme Decision, his basic pension increased by Rs. 300

Basic Pension eligible for commutation      Rs. 100

Factor applicable at the time of retirement: 10.13

Factor applicable if today's age is taken:    04.17

Commutated value payable on factor applicable at the time of retirement: 10.13x 12x 100 Rs. 12552

Commutated value on factor applicable at today's    4.17x 12 x 100 Rs. 5004

It will have to be ensured that as and when commutation difference arrears are paid by banks or wherever already paid the factor taken for calculation of commutated value should be factor applicable at the time of retirement and not applicable on the date of actual payment.

**ISSUES RELATING TO PAYMENT OF ARREARS AS PER SUPREME COURT JUDGMENT IN THE MATTER OF 1616-1684 INDEX WHICH ARE SETTLED AND THERE IS BY AND LARGE NO DISPUTE**

1. Eligibility to receive arrears
2. Calculation of difference in basic pension and DR thereon
3. Calculation of interest on the amount as per point no 2 for the delayed period.
4. Actual payment to the eligible persons
5. Calculation of commuted value as per the factor applicable on the date of retirement.

### **RECOVERY OF COMMUTATED VALUE**

As per provisions of Pension Regulations, 1995, monetary benefit of commutation available to pensioner is (a) recoverable one (b) recovery is to be done as per the procedure and formula given in **Regulation No. 41 (5) of Pension Regulations, 1995**, which reads as under

**“ An employee who had commuted the admissible portion of pension is entitled to have the commuted portion of the pension restored after the expiry of a period 15 years from THE DATE OF COMMUTATION “**

From the above provisions, the following points are worth noting

- (a) Commuted portion of basic pension will stand reduced for the period of 15 years (180 months) from **date of commutation.**
- (b) On completion of period of 15 years, commuted portion of basic pension will get restored from 181<sup>st</sup> month automatically.
- (c) On analyzing this provision, it can be observed that reduction in pension for 180 months takes care of not only recovery of principal amount but also include element of payment of interest by the pensioner to pension fund. In the above given example, against commuted value of Rs. 12552, one is required to refund Rs. 18000 to pension fund in the form of reduction in basic pension for 180 months. Payment of Rs. 18000 can be divided in to two parts- **Rs 12552 towards principal** and **Rs. 5448 towards interest.**
- (d) Supreme Court has passed the order that amount due and payable be calculated and paid. It has to be read along with relevant provisions of Pension Regulations. It cannot be read and implemented in isolation. **In view of this, recovery of commuted value can be done only as per the provisions of Pension Regulations (41-5) and banks do not have any discretion to adopt any other formula for recovery. In other words for every commuted value of Rs. 100 banks cannot recover more than Rs 18000.**
- (e) When to start recovery of commuted value in 180 months, the regulations are absolutely clear. It has to start from the date of the commutation.
- (f) What is the date of commutation in the present case is the most critical point which will decide whether recovery should commence from date of actual payment credited in the account or date

when commutation was paid originally at the time of retirement. The Supreme Court order says that while calculating arrears including of commutation, value date concept has to be applied. In other words, all arrears in this respect had become payable on the date of retirement and therefore for delayed payment, interest has to be paid at the rate of 9 per cent up to the date of actual payment.

(g) It is seen that as far as commutation arrears are concerned , banks can be divided in three parts

(i)Banks that have since paid the arrears and recovered the commuted value from original date simultaneously. Further they have recovered interest on delayed recovery of monthly installments at the rate of 9 per cent. It is resulting in to net recovery in many cases due to interest element. This method adopted by banks is contrary to the provisions of regulation no 41(5). The correct method to be followed as per provisions of the pension regulations and Supreme Court decision should be as under

#### **Example**

Persons retired at the age of 60 on 1.1.2000. For every 100 commuted value he is entitled to get the following net arrears now. Date of payment of arrears is 31.03.2020

Commutated Value on the factor on the date of retirement	Rs.	12 552
Interest for 20 years and 3 months at the rate of 9 per cent	Rs.	22907
Total	Rs.	35459
Less Recovery of Rs. 100 per month for 180 months	Rs.	18000
Net Arrears for commutation per Rs 100	Rs.	17459

If banks that have paid arrears following any other formula, it violation of pension regulation provisions as well as Supreme Court direction. It may be stated that by applying this formula there will not be any case of recovery from the pensioner.

**Our concerned affiliates who come under this category should immediately examine the calculations for such payments and immediately issue notice for required corrections by following above formula if deviations are observed. In case corrections are not made within maximum period of 3 months, Affiliates/ AIBRF should move contempt petition in Supreme Court for direction.**

(ii) Many banks have not taken any action to pay arrears for commutation even after expiry of expiry of 21 months from the date of judgment while court order was to pay the arrears latest by 13.6 2018. Such cases are clear cut violation of Supreme Court order and amounts to Contempt of Court.

Our affiliates from these banks are advised to immediately issue notice to banks giving 3 months' time for payment of arrears and in case banks fail to settle the arrears, concerned banks/ AIBRF should move contempt petition in Supreme Court for direction

(iii) There is feeling in certain quarters that based on interpretation of some guidelines issued by the government / IBA for recovery of commuted value, date of commutation should be treated as date of actual payment and accordingly recovery should commence after the date of payment. In case our affiliates feel that this needs to be pursued , we will have to approach Supreme Court for seeking clarification on this issue and specific direction for recovery of commuted value.

**PROPOSED ACTION TO BE TAKEN BY OUR AFFILIATES FOR RESOLUTION OF THE ISSUES.**

- (1) The Banks where commutation arrears have already been should verify the formula applied for recovery and found in variance of provision of Regulation 41(5), our affiliates should immediately issue notice to the bank for correction as per provisions of Regulation and pay the difference. If No steps are taken by the bank for correction the affiliate should file contempt petition in the Supreme Court or give mandate to AIBRF to take legal action.
- (2) The Banks where payments have not been made yet, our affiliates must issue notice giving 3 months' time to release the arrears as per Supreme Court judgment and as per provisions of Regulation No 41(5), In case the bank fails to pay the arrears in the given time our affiliates should file Contempt petition or give mandate to AIBRF to do so.
- (3) Our affiliates are requested to give their opinion as to whether AIBRF should approach to Supreme Court to seek clarification on date of commutation to decide date of recovery of commuted value.

**NOTE: In view of extraordinary situation prevailing in the country due to coronavirus pandemic we are fixing notice period of 3 months. It may also be mentioned that due to further delay in payment there will be no financial loss to members due to clause of interest payment for delayed payment.**

**ALL OUR AFFILIATES ARE REQUESTED TO CONSIDER to FOLLOW THE ABOVE STEPS AND SEND THEIR FEEDBACK ON IT.**

(S.C.JAIN)  
GENERAL SECRETARY