

NOTE TO AIBRF ON FURTHER COURSE OF ACTION ON 100% DA ISSUE

After the recent Supreme Court judgment in the UBI case, there are suggestions from pensioners that UFBU should be approached and requested for getting 100% DA, at least from a prospective date. My personal view is that even if UFBU pursues the request with all sincerity, IBA is likely to delay the decision, which may result in our forgoing our right to file Review petition which has to be filed within 30 days of the Judgment. Though court holidays can be excluded in reckoning the 30 days, IBA is unlikely to give its decision within 2 months and by the time we are informed of their decision, the right to file review petition would have been lost. On the other hand IBA may not consider the demand for the reason "Sub Judice" in case we file the review petition. Therefore the best course of action would be to file the review petition at the earliest and in case it does not succeed, to file the Curative petition without delay. I learn that Curative petitions are studied by two or three senior judges and therefore the probability of getting a favourable decision is more in a Curative petition. (Review petitions are circulated among the judges of the Bench which earlier heard the case.) We shall approach UFBU after exhausting all legal avenues only so that we do not forgo the arrears of DA which is a sizeable amount which the pensioners are legally and justly entitled to.

Regarding the Review petition, our approach may be in the following lines. Before proceeding with that it would be appropriate to list the strengths and weakness of our case.

Weakness:

- 1) Though the Joint Note on Pension Settlement contains a stipulation that DA to pensioners will be at the DA rates prevailing in RBI, the same is not found incorporated in the Pension Regulations.

Strengths:

- 1) The judgment in D.S.Nakra is very much applicable to our issue and the precedents quoted in the Judgment also confirm this as explained later in this note.
- 2) By improving the DA formula and extending 100% neutralization Banks have made improvement in the existing Pension Scheme only. By no stretch of imagination can anyone claim that by this improvement a new Pension Scheme has been introduced. Judgment after Judgment of the Supreme Court of India have reiterated that no cut off date can be imposed for extending the benefit of an improvement in the existing Pension Scheme.

Other Points for consideration:

- 1) In the Joint Note dt.02/06/2005 there is no mention that Pensioners who retired before 01/11/2002 are not eligible for the enhanced DA which

provided for 100% neutralization and they will only continue to get the DA at tapering rates as they were getting till date.

- 2) In the 9th BPS/Joint note only the tapering rates were reintroduced and it was agreed that the Pre November 2002 pensioners will continue to get DA at tapering rates.
- 3) The Joint notes are signed by Associations representing the serving employees. Their interests are in conflict with the interest of the Pensioners in matters involving financial outlay. The settlements entered into by these Associations cannot bind the Pensioners if they are adverse to the interest of the Pensioners.
- 4) Hon'ble Judge has not understood the process of merger of a portion of the DA with Basic and the consequent reduction in the rate of DA to prevent payment of DA on DA.
- 5) Hon'ble Judge also has not understood the enormity of the amount foregone by the Pre November 2002 pensioners. Though the amount foregone may appear to be small when read in absolute terms, the enormity will strike only when it is read in conjunction with the low amount of pension drawn by the Pensioner.
- 6) Certain clauses of the Pension Settlement/Joint Note were wantonly not incorporated in the Pension Regulations to the detriment of the Pensioners. Though the Pension Regulations were circulated, the employees had no inkling that the Bank will take undue advantage of these omissions in the Regulations, to deny their normal and rightful benefits like improved DA formula, periodical revision of pension etc. Such acts of betrayal of trust by the Banks and Govt. in matters like pension, the only source of livelihood for the pensioners should be condemned by the Court. Banks and Govt should not be allowed to enjoy the fruits of/take shelter under their unbecoming acts/ wrongs.
- 7) Two Judge Bench of the Madras High Court had decided that pre November 2002 retirees are covered by the earlier BPS and they cannot claim the benefits under 8th BPS. Supreme Court has also upheld this view. This view is not based on facts. Pension benefit was introduced through a Settlement/Joint Note followed by Board approved Pension Regulation and not through BPS. BPSs pertain to wages and service conditions of employees and they have nothing to do with pension. Therefore the finding of the Madras High Court that, for the purpose of payment of pension and other related benefits pre November 2002 pensioners come under the ambit of the BPS/Joint note which was in vogue at the date of their retirement and do not come under the ambit of 8th BPS/Joint Note is wrong as BPS/Joint note have nothing to do with Pension. Pensioners come under the ambit of the Pension Settlement and Pension Regulations only. Therefore the decision in Herbertsons that the settlement has to be taken as a package deal is not relevant to our case. If the finding of the Madras High Court that, payment of pension is governed by BPS in vogue at the time of retirement is taken as correct,

the pensioners who retired in the year 1986 and subsequent years up to the year of introduction of pension will not be eligible for pension.

- 8) In the Madras High Court two judge bench judgment as well as in the Judgment of the Supreme Court of India, there is a reference to Statutory Pension and Contributory pension. Though contributory nature of the Bank Pension funds is not shown as the reason for denying our request, the issue needs to be looked into.

In a contributory pension scheme a Fund is built up to meet the pension payments. In Statutory pension there is no built up of a Fund. However both the schemes entail expenditure to the employer. More over building up of the fund is a sound financial and accounting practice. This fund is not a fixed amount as described in the D.S.Nakra judgment. Based on actuarial calculations, contributions are made by the employer every financial year. Banks have more than Rs.2 lac crores in their Pension Funds and are able to meet the pension payments from out of the interest income of the funds itself leaving the corpus to grow. Therefore building up the Fund cannot be and should not be cited as a reason for denying benefits agreed to be given in the settlement.

- 9) Numbers of Judgments have been cited in the Judgments of the Courts to establish that the ratio in D.S.Nakra is not applicable to our case. Relevancy or otherwise of these judgments are discussed in the following Table.

Sl.No.	Case Law	Finding	Relevancy
01	D.S.Nakra V Union of India.	The division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons, otherwise equally placed, it would be discriminatory.	Relevant. The cut off date of 01/11/2002 in our case happened to be the date of implementation of 8 th BPS. Had the BPS been implemented on some other date, that date would have become the cut off date. Thus there is no rationale in dividing the pensioners for the purpose of giving enhanced DA.
02	Kallakurichi Taluk Retired Officials Association V State of Tamil Nadu.	Inflation would have the same effect on all pensioners whether retired prior to 01/06/1988 or thereafter.	Relevant.

03	Krishna Kumar v Union of India	PF retirees and Pension retirees form a different class.	Not relevant to our case.
04	Union of India v P.N.Menon and others	Imposing a cut off date for the liberalised scheme is not discriminatory.	Not relevant. Ours is an improvement in existing benefit and not a liberalised scheme.
05	State of Punjab v Justice S.S.Dewan	If it is by way of upward revision of the existing pension scheme ratio of D.S.Nakra would apply. If it is held to be a new retiral benefit or a new scheme cut off date can be imposed. New retiral benefit. Hence demand for removing cut off date turned down.	Not relevant.
06	Co.B.J.Akkara V Govt. of India	Pensioners with the same rank need not be given identical Pension.	Not relevant.
07	Union off India V S.R.Dhingra	Introduction of New Pension scheme. Imposing cut off date permitted.	Not relevant. Ours is improvement in existing benefit.
08	Exservices League v Union of India	Claim for same amount of pension as other employees of his rank irrespective of date of retirement.	Not relevant.
09	K.L.Rathee v Union of India	-do-	Not Relevant.
10	Kasturi v Managing Director, SBI	Claim for joining pension scheme.	Not relevant.