

ALL INDIA BANK RETIREES' FEDERATION (REGD.)

D/1/ Sector C Scheme No. 71 Indore 452009

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SILVER JUBILEE YEAR (1994-2019)



Ref. 2020/106

15.05.2020

Shri Sunil Mehta
Chief Executive, Indian Banks' Association
MUMBAI

Respected Sir,

Re: Payment of Commutation Arrears as per Supreme Court order dated 13.2.2018

We forward herewith Uco. Bank Management Circular No. CHO/PMG/2020-21/12 dated 12.5.2020 stipulating submission of undertaking by the eligible pensioners to receive/ refund commutation difference payable to them as per the Supreme Court judgment dated 13.2.2018 in SLP No.5525/2012, for your kind information.

2. It is stated in the above referred circular of Uco. Bank that the pensioner will have to give undertaking in the prescribed format for receiving commutation arrears as well as authorizing the bank for recovery if such situation arises. . In this regard, , your kind attention is invited on IBA Circular No. HR & IR/ 2018-19/G2/ 4786 dated 3.4.2018 advising member banks to consider payment of arrears to the eligible pensioners as per the above referred judgment of Supreme Court order which stated that “ amount due and payable be paid , be calculated and paid within 4 months from today.”

3. We find that most of the banks have still not taken steps for payment of commutation arrears even after lapse of more than 21 months since expiry of last date of 13.6.2018 fixed by honorable Supreme Court for making such payments. You will kindly agree that this inordinate delay of the court order amounts to contempt of the court and liable for contempt proceedings.

4. Instead of complying court order by banks at least now, we are surprised to find that Uco. Bank management has issued the above referred circular which is completely in violation of Supreme Court order and creating some unlawful alibi to prevent the eligible pensioners from receiving lawful due benefits. Your kind attention is invited on the following contents of the circular

- (a) Supreme Court has not stipulated condition of obtaining any undertaking for releasing arrears.
- (b) The above referred circular of IBA also does not stipulate/ suggest to member banks to obtain any undertaking from eligible pensioners to pay arrears in compliance of the court order.

- (c) In fact that no bank including Uco. Bank so far asked / insisted for giving undertaking for releasing arrears earlier in compliance of the said order of Supreme Court.
- (d) Ongoing through contents of the undertaking, it is observed that it has asked the eligible pensioners to give authority to the bank to either pay arrears or recover the amount already paid without providing any details of the calculation. According to our analysis, this has been designed to create a sense of fear among the eligible pensioners and also with an object to get legal protection in future for non-compliance of the court order. In view of this we are of the view that this undertaking is arbitrary, unwarranted and bad in law.
- (e) It is interesting to note that submission of undertaking by the pensioner is made optional according to this circular of the bank. If one does not give this undertaking he/she will remain unaffected. Neither arrears will be paid nor will any recovery be made. We are of the view that this will not amount to compliance of the court order, rather it may result in violation of the court order.
- (f) Further we observe from contents of the said circular that the bank proposes to recover installments of commutation arrears simultaneously along with interest at the rate of 9 per cent for late recovery. We are of the firm view that this condition is in complete violation of Supreme Court judgment dated 13.2.2018 as well as relevant provisions of pension regulations.
- (g) In this connection, your kind attention is invited on Pension Regulation 41 of Pension Regulations, 1995 (Chapter VIII) which deals with the concept and logic of giving lump sum advance to the pensioners by way of commutation. It is recoverable advance. But it is not recoverable in the manner applicable to other normal loans. But the method of recovery is stipulated and provided under sub regulation 5 of Pension Regulation 41 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 of recovery, it can be done only by reducing commuted portion of basic pension for a stipulated period of 15 years (180 months) that too from the date of commutation. You will kindly observe that this 15 year period takes care of recovery of principal as well as element of interest. Now Uco Bank circular designing and stipulating its own method of recovery for commuted value is in complete violation of relevant provisions of pension regulations and as well as in violation of Supreme Court order which says amount due and payable should be paid along with 9 per cent interest.

You will kindly observe that Supreme Court has ordered for payment of commuted arrears along with interest because the relevant clause incorporated in the settlement of 2005 was ab-intio illegal and arbitrary preventing the beneficiaries from getting legal benefits they were entitled. While giving benefit of interest for the above reasons, the court has not passed any specific order for any formula for recovery of commutation arrears. In view of this, the recovery will have to be naturally governed by the above provisions of the pension regulations. Spirit of the scheme of commutation also says that pay the commutation amount and recovers in next 180 months by reducing the commuted portion of basic pension. The above circular of Uco .Bank is in complete violation of Supreme Court order, relevant provisions of pension regulations and also IBA advice given to member banks in this regard.

5. Whilst on the subject, we would like to once again convey our thanks to IBA and its executives for properly and correctly understanding and appreciating Supreme Court judgment and taking very positive steps to implement it. Accordingly, the above referred circular was issued by IBA after taking decision on it in the meeting of Management Committee held on 28.3.2018. IBA timely intervention in the matter helped large number of retiree getting benefit from Supreme Court judgment without any further legal recourse by them.

6. But we find that while implementing Supreme Court judgment and IBA advice on it, banks failed to properly understand Supreme Court judgment, IBA advice and relevant provisions of pension regulations in dealing with commutation arrears. They felt that amount due and payable ordered by the Supreme Court judgment only include difference in basic pension and consequent effect of variable DR thereon. They completely missed the point that amount due and payable also include commutation arrears. It appears Banks also could not properly connect Supreme Court judgment with the original judgment of Karnataka High Court which was upheld by the Supreme Court. It may be pointed out that Karnataka High Court judgment clearly and specifically mention payment of commutation arrears too along with other arrears.

7. Subsequently, when this anomaly was pointed by AIBRF, bank level retiree organisations continuously, it received attention of IBA/ bank managements. Having realized the mistake in implementing Supreme Court decision, we find that many banks of late have started paying commutation difference to eligible pensioners. But while effecting payment of commutation arrears, banks are following different formula for recovery of commuted portion possibly in the absence of clear and specific instructions and guidelines from IBA. We find that on matter being referred by some banks, IBA has given very general nature of reply which appears to have created more confusion among banks rather than helping them to adopt correct method. Because of this situation and wrong interpretation of the relevant provisions, banks are raising demand of recovery for commutation arrears. In nutshell, there is whole lot of confusion at the bank level.

8. In view of this it is our humble request to you that entire issue of payment of commutation arrears may kindly be re-examined at IBA level, taking in to the following facts / documents in to consideration and specific advice may be given to members to follow proper and correct procedure for recovery of commuted arrears

- (a) Supreme Court judgment dated 13.02.2018
- (b) Karnataka High Court judgment dated 8.3.2012
- (c) Provision of Regulation No. 41(5) of Pension Regulation 1995
- (d) Corresponding provisions on commutation as given in Central Service Rules (commutation of pension) 1981 and the clarifications issued on them by the government to deal with recovery when commuted value is paid to the pensioner in parts.

We are quite sure this exercise based on the above and thereafter issuing the advice to member banks to follow the procedure for recovery uniformly will resolve the issue and avoid further litigation which otherwise may be forced.

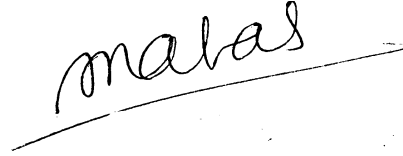
9. In this regard, we also wish to invite your kind attention on residual provisions given under regulation no. 56 of Pension Regulation 1995 which reads as under:

“In case of doubt, in the matter of application of these regulations, regard may be had to the corresponding provisions of Central Civil Rules, 1972 Or Central Civil Services (Commutation of Pension Rules), 1981 applicable for central government employees with such exceptions and modifications as the bank, with the previous sanction of the Central Government, may from time to time determine.”

10. We find that in view of inordinate delay taking place in implementing and complying Supreme Court order in the matter, banks are adopting different formula/methods for recovery of commutation arrears and bank like Uco. Bank introducing concept of undertaking, IBA has also not been able to provide specific guidelines to member banks on quarries raised, it is clear that there are reasonable doubts in the minds of authorities on interpretation and applicability of the relevant provisions to deal with the matter. Therefore there are sufficient grounds to invoke provisions of regulation no.56. In view of this we hereby invoke provisions of regulation no 56 at the industry level as of one of important stake holder and request you to appoint competent legal person/ authority to adjudicate the DOUBTS to settle the issue in proper and legal manner.

With Respectful Greetings,

Yours Sincerely,

A handwritten signature in cursive script that reads "maha". Below the signature is a single horizontal line that extends across the width of the signature.

(S.C.JAIN)
GENERAL SECRETARY