

COORDINATION OF BANK PENSIONERS' AND RETIREES ORGANISATIONS AND

ALL INDIA BANK RETIREES' FEDERATION

J-208, Vijay Rattan Vihar, Sector-15, Part II, Gurgaon-122001

Tel: 01244270198 Mob: 9868220338

Dated: 07.03.2019

Shri Sunil Mehta,
The Chairman,
Indian Banks Association,
Mumbai.

Dear Sir,

Sub: Reckoning of Special Allowance for Terminal Benefits.

We have been taking up the pending issues of Bank Pensioners and Retirees with IBA and Govt of India on a regular basis. However the Pensioners and retirees have met with limited success only as a sequel to the orders of Hon'ble Supreme Court of India. We sincerely wish that IBA considers our genuine and legitimate demands favourably and resolve some of the issues which have been causing serious concerns to more than 5.00 lacs Senior and Super Senior Citizens of the Banking Industry. In this background we request you to consider the following favourably:

1. Reckoning Special Allowance for Terminal Benefits

A new Special Allowance was introduced as a component of wages/salary to all the Bank Employees and Officers through 10th Bipartite Settlement/Joint Note dated 25.05.2015 at the following rate:

- a. Upto Scale III @ 07.75% of Basic Pay
- b. Scale IV & V @10.00% of Basic Pay
- c. Scale VI & VII @11.00% of Basic Pay

The said allowance was an interior component of monthly salary payable to all the employees and officers on duty or on leave and hence was not assigned to any special function or duty performed by them. Though the Special Allowance was universal in nature, the settlement and Joint Note contained an illegal clause that the special allowance shall not reckon for superannuation benefits viz Pension & Gratuity. In this connection it is submitted that the Hon'ble Supreme Court has held in Civil Appeal No. 5525 of 2012 in case of Bank of Baroda Vs G Palani that only purpose of addition of explanation(c) to Regulation 2(s) was to take away the actual computation of Pension on the basis of the salary which was drawn in the preceding 10 months. The said explanation was struck down being arbitrary and repugnant to other provisions/Regulations like 2(d), 38(1)(2) and 35. You will appreciate that the exclusion clause in special allowance which makes it unreckonable for terminal benefits is akin to the explanation (c) to Pension Regulation 2(s) and hence is arbitrary and illegal.

To further substantiate our demand we wish to invite your kind attention to the Judgement delivered by Hon'ble Supreme Court on 20th February, 2009 in Civil Appeal No. 6221 of 2011 filed by Regional Provident

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Commissioner (II) West Bengal where in it was held that the Special Allowance payable in all these concerns to all the employees without exception falls within the definition of Basic Wages in Sec 2(b) of Employees Provident Fund Act 1952. It is also pertinent to submit that the definition of Basic Wages in Sec 2(b) of EPF Act is similar to the definition of Wages in Sec 2(s) of Payment of Gratuity Act 1972. The above Judgement is clearly applicable to Banks PF Scheme too making it obligatory on Banks to reckon Special Allowance for contribution to Provident Fund for employees who are PF Optees and as a sequel extend its applications to pay define under Pension Regulation 2(s).

It is clear from the forgoing facts that both the ingredients necessary to reckon Special Allowance as Pay for the purpose of Superannuation benefits are satisfied in as much as our Special Allowance is already counted for Payment of Dearness Allowance in terms of 10th Bi Partite Settlement and ought to be counted for contribution of the Provident Fund in the light of the above Judgement of the Hon'ble Supreme Court delivered on 28th February, 2019.

In view of the ratio applied by the Hon'ble Supreme Court, the Special Allowance with its Dearness Allowance should be reckoned for Payment of Gratuity, Contribution to Provident Fund and Computation of Pension. It is also pertinent to submit that All Allowances counted for the purpose of making contribution to the Provident Fund and for the Payment of Dearness Allowance are the component of Pay for the purpose of Computation of Pension in terms of Pension Regulation 2(s)(b)(ii).

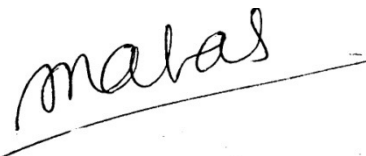
We request you to consider our submission and remove the anomaly by reckoning Special Allowance for the purpose of Superannuation benefits from 01.11.2012

Thanking you,

Yours Faithfully,


(A. Ramesh Babu)
Joint Conveners, CBPRO


(K.V. Acharya)


(S.C. Jain)
General Secretary, AIBRF

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To

Date: 07.03.2019

The Convenor & General Secretaries of Constituents of UFBU

Dear Comrades,

Sub: Reckoning of Special Allowance for Terminal Benefits.

We have been taking up the pending issues of Bank Pensioners and Retirees with IBA, Govt of India and UFBU on a regular basis. However the Pensioners and retirees have met with limited success only as a sequel to the orders of Hon'ble Supreme Court of India. We sincerely wish that IBA considers our genuine and legitimate demands favourably and resolve the issues which have been causing serious concerns to more than 7.00 lacs Senior and Super Senior Citizens of the Banking Industry. In this background we request you to take up the issue of Reckoning Special Allowance for terminal benefits with IBA on priority. We are furnishing hereunder our views on merits of the case:

Reckoning Special Allowance for Terminal Benefits

A new Special Allowance was introduced as a component of wages/salary to all the Bank Employees and Officers through 10th Bipartite Settlement/Joint Note dated 25.05.2015 at the following rates:

- | | |
|-------------------|-----------------------|
| a. Upto Scale III | @ 07.75% of Basic Pay |
| b. Scale IV & V | @10.00% of Basic Pay |
| c. Scale VI & VII | @11.00% of Basic Pay |

The said allowance was an integral component of monthly salary payable to all the employees and officers on duty or on leave and hence was not assigned to any special function or duty performed by them. Though the Special Allowance was universal in nature, the settlement and Joint Note dated 25.05.2015 contained an illegal clause that the special allowance shall not reckon for superannuation benefits viz Pension & Gratuity. In this connection it is submitted that the Hon'ble Supreme Court in its Judgement delivered on 13.02.2018 has held in Civil Appeal No. 5525 of 2012 in case of Bank of Baroda Vs G Palani that only purpose of addition of explanation(c) to Regulation 2(s) was to take away the actual computation of Pension on the basis of the salary which was drawn in the preceding 10 months. The said explanation was struck down being arbitrary and repugnant to other provisions/Regulations like 2(d), 38(1)(2) and 35. You will appreciate that the exclusion clause in special allowance which makes it unreckonable for terminal benefits is akin to the explanation (c) to Pension Regulation 2(s) and hence is arbitrary and illegal.

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To further substantiate our demand we wish to invite your kind attention to the Judgement delivered by Hon'ble Supreme Court on 28th February, 2019 in Civil Appeal No. 6221 of 2011 filed by Regional Provident Commissioner (II) West Bengal where in it was held that the Special Allowance payable in all these concerns to all the employees without exception falls within the definition of Basic Wages in Sec 2(b) of Employees Provident Fund Act 1952. It is also pertinent to submit that the definition of Basic Wages in Sec 2(b) of EPF Act is similar to the definition of Wages in Sec 2(s) of Payment of Gratuity Act 1972. The above Judgement is clearly applicable to Banks PF Scheme too making it obligatory on Banks to reckon Special Allowance for contribution to Provident Fund for employees who are PF Optees and as a sequel extend its application to pay defined under Pension Regulation 2(s).

It is clear from the forgoing fact that both the ingredients necessary to reckon Special Allowance as Pay for the purpose of Superannuation benefits are satisfied in as much as our Special Allowance is already counted for Payment of Dearness Allowance in terms of 10th Bi Partite Settlement and ought to be counted for contribution of the Provident Fund in the light of the above Judgement of the Hon'ble Supreme Court delivered on 28th February, 2019.

In view of the ratio applied by the Hon'ble Supreme Court, the Special Allowance with its Dearness Allowance should be reckoned for Payment of Gratuity, Contribution to Provident Fund and Computation of Pension. It is also pertinent to submit that All Allowances counted for the purpose of making contribution to the Provident Fund and for the Payment of Dearness Allowance are the component of Pay for the purpose of Computation of Pension in terms of Pension Regulation 2(s)(b)(ii).

We request you to consider our submissions and take up with IBA on utmost priority for removal of the anomaly by reckoning Special Allowance for the purpose of Superannuation benefits from 01.11.2012.

With Regards,

Yours Comradely,



(A. Ramesh Babu)

Joint Conveners, CBPRO



(K.V. Acharya)



(S.C. Jain)

General Secretary, AIBRF

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