

Note on reduction of Commutation portion of Basic Pension, even before payment.

Bank employees are entitled to Commute Pension to the maximum extent of 1/3rd of Basic Pension in terms of regulation 41 of Bank Employees' Pension Regulations, 1995. Almost every retiree is commuting 1/3rd of Basic Pension, at the time of retirement. Commuted portion of Basic Pension is reduced from the Basic Pension for a period of 15 years from the date of Commutation. There is no controversy, if the Basic Pension remains unaltered. But, there is a controversy in case of Commutation of Pension in case of Pensioners, whose Basic Pension is revised at a later date on account of various reasons such as decision of the Courts, rectification of errors in calculation of Pension, Bipartite Settlement, etc. In all such cases, Banks are rightly calculating Commutation amount based on the Commutation factor applicable to the age of the retiree at the time of retirement. Commuted portion of increased Basic Pension is reduced from the date of retirement, even though the payment of Commuted amount is made subsequent to retirement in respect of cases where Basic Pension is revised on account of various reasons. In several cases, the gap between the date of retirement and date of actual payment of commuted amount is vast. In many cases, such periods exceed even fifteen years period.

What is the impact in such cases, where commuted amount is paid subsequently on account of revision in Pension consequent to decision of Courts or rectification of mistakes while calculating Pension or on account of Settlement. The Payment of pension in terms of Regulation 29(5) of Bank Employees' Pension Regulations, 1995 in terms of decision of Hon'ble Supreme Court of India in Bank of India & ors Vs Mohandas & ors by duly adding service to the maximum extent of five years, is one such example, where pension is revised after a period of 8 ½ years after retirement. In respect of Vijaya Bank and Allahabad Bank, the delay is more than thirteen years. Retirees who are benefited by this Judgment or subsequent judgments in same controversy, got the commuted amount for the increase portion of basic pension calculated as on the date of retirement, but actually received the amount after a gap which is more than 8½ years. But, while calculating arrears, Banks reduced the Basic Pension by 1/3rd of the increased Basic Pension amount from the date of retirement instead of reducing from the date of payment of increased portion of Basic Pension. This has resulted in great loss for the retirees.

What is Commutation of Pension ? Commutation of Pension means exchange of 1/3rd of Basic Pension payable over a period of fifteen years with a lumpsum. Reduced portion is restored after a period of fifteen years from the date of Commutation. In financial terms, Commutation amount is the discounted amount or purchase price of 1/3rd of Basic Pension payable over a period of fifteen years. It is discounting future payments, but not discounting past payments.

There are three events in Commutation of pension – a) Applying for Commutation, b) Payment of Commutation amount and c) Restoration reduced portion of Basic Pension.

- a) Date of application of Commutation : In respect of superannuation/voluntary retirement Commutation becomes absolute on the date of retirement, even though application is submitted prior to retirement. Pensioner has the right to receive the commutation amount which is calculated based on his age as on next birthday.
- b) Payment of Commutation amount : There is no controversy, if the Commutation amount is paid on or immediately after retirement. But, the pensioners are losing if the payment is made subsequent to retirement on account of revision in Basic Pension consequent to Court Orders, etc., after delay. Most Banks are reducing the commuted portion of increased amount

of Basic Pension from the date of retirement, instead of one month from the date of payment of commuted amount. There are many cases where amount recovered on account of reduction of Basic Pension is much higher than the Commuted amount received later by the retiree.

- c) Restoration of reduced portion of Basic Pension: It is immediately after fifteen years after receipt of commutation.

This controversy is on account of misunderstanding of the word 'Commutation'. 'Commutation' is a process, which begins with application for 'Commutation' and concludes with payment of Commuted amount. Banks are not entitled to reduce 1/3rd of till this process is complete. Whenever, a part amount is paid after a period of time on account of any reason, 'Commutable portion' can be reduced only after payment of such benefit, i.e completion of entire process of 'Commutation of pension', not before. Reduction of commuted portion of Basic pension, even before payment of pension, is erroneous.

How to remove this anomaly ? Notes (2) to the table provided in Regulation 41 clearly states that reduced amount is restored after fifteen years after commutation. Which means, reduction commences from the date of commutation. Commutation also means actual date of payment and it is neither date of retirement nor date of application. If applied earlier, Commutation becomes absolute on the date of retirement. The retiree is eligible to receive full amount of commutation on the date of retirement. In respect of cases, the delay in payment is on account of omission & commission by the Bank, retiree cannot be penalised.

Regulation 56 of Bank Employees Pension Regulations, 1995 provides for reference to corresponding provisions of Central Civil Commutation of Pension Rules, in case of doubt. Since, Regulation 41 does not explicitly provide for payment of Commutation and reduction thereof, in case of payment of a portion of Commutation on account of upward revision of Pension for any reason, there is a need to refer to Rule 5, 6 and 10 of Central Civil Commutation of Pension Rules, 1972. These documents/Rules and Regulations make it abundantly clear that these Pensioners are entitled to differential Commutation calculated taking into account age as on next Birthday at the time of retirement and reduction for a period of fifteen years, from the pension of the month in which Commutation amount is paid.

Indian Banks' Association, vide Cir No.HR&IR/KU/2015-16/G2/1506 dated 17/10/2015, quoting the Judgment of Hon'ble High Court of Punjab & Haryana at Chandigarh, has advised members Banks that : 'Regulation 56 deals with a situation where doubt arises in the matter of application of the Pension Scheme and mandates to clear that doubt by referring to Central Civil Services Rules, 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for . . .'. Further, Indian Banks' Association has also informed Shri K Srinivasan, President of SBT Retirees' Association that deduction of Commuted portion of Pension for a period of 15 years after such payment, vide PD/GSN/MISC/G2/486 dated 28/07/2001. Copies of these Circular and letter are annexed. Since, treatment of Commutation of a portion of Pension later, on account of various reasons/orders/bipartite settlements, etc., is not covered explicitly in Regulation 41 of Bank Employees' Pension Regulations, 1995, clearing the doubts by referring to corresponding Rules of Central Civil Services (Commutation of Pension) Rules, 1981 is mandated in terms of Regulation 56 of Bank Employees'

Pension Regulations, 1995. Application of Regulation 56 is also confirmed/clarified by Hon'ble High Court of Punjab & Haryana at Chandigarh.

Therefore, Rule 6 (1) b, 6 (2), 10, 10(A) and 13 of Central Civil Services (Commutation of Pension) Rules, 1981 read with Regulation 56 of Bank Employees' Pension Regulations, 1995 clearly provides for reduction of commutation portion commences only after payment, but not before. Further, period of one year applicable for Medical Examination commences from the date of order payment of Pension/Commutation. Said Rules are extracted, hereunder :

6 (1) The commutation of pension shall become absolute in the case of an applicant referred to

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Provided that -

(b) in the case of an applicant who is drawing pension from a branch of a nationalized bank, the reduction in the amount of pension on account of commutation shall be operative from the date on which the commuted value of pension is credited by the bank to the applicant's account to which pension is being credited.

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(2) In the case of an applicant referred to in Rule 9 or Rule 10, the commuted value is paid in two or more stages, the reduction in the amount of pension shall be made from the respective dates of the payments as laid down in Clause (a) or Clause (b) of the proviso to sub-rule (1).

10. **Retrospective revision of final pension** - An applicant who has commuted a percentage of his final pension and after commutation his pension has been revised and enhanced retrospectively as a result of Government's decision, the applicant shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted value already authorized. For the payment of difference the applicant shall not be required to apply afresh : Provided that in the case of an applicant who has commuted a percentage of his original pension not exceeding rupees six thousand after being declared fit by a Civil Surgeon or a District Medical Officer and as a result of retrospective enhancement of pension, he becomes eligible to commute an amount exceeding six thousand rupees per mensem, he shall be allowed the difference between the commuted value of six thousand rupees per mensem and the commuted value of the percentage of the original pension without further medical examination. The commutation of any further amount beyond rupees six thousand per mensem shall be treated as fresh commutation and allowed subject to examination by a Medical Board.

10 A. Restoration of Commuted Pension –

“The commuted amount of pension shall be restored on completion of fifteen years from the date the reduction of pension on account of commutation becomes operative in accordance with rule 6:

Provided that when the commutation amount was paid on more than one occasion on account of upward revision of pension, the respective commuted amount of pension shall be restored on completion of fifteen years from the respective date(s)”

13. Application for commutation of pension –

(1) An applicant, who is in receipt of any pension referred to in Rule 12 and desires to commute a percentage of that pension any time after the date following the date of his retirement from service but before the expiry of one year from the date of retirement, shall –

(a) apply to the Head of Office in Form 1 after the date of his retirement ;

(b) ensure that the application in Form 1, duly completed , is delivered to the Head of Office as early as possible but not later one year of the date of his retirement :

Provided that in the case of an applicant –

(a) referred to in Clause (iii) of Rule 12, where order retiring him from Government service had been issued from a retrospective date, the period of one year referred to in this sub-rule shall reckon from the date of issue of the retirement orders ;

(b) Referred to in Clause (v) of Rule 12, the period of one year referred to in this sub-rule shall reckon from the date of the issue of the orders consequent on the finalization of the departmental or judicial proceedings.

Office Memorandum No.38/79/2008/P&PW(G) dated 16/2/2009 by Ministry of Personnel and Pensioners' Welfare clearly provides for application of Commutation Factor as applicable on the date of retirement. This also clarifies again regarding recovery for a period of fifteen years from the month in which the commutation is paid.

FAQs on Commutation of Pension as available in FAQs on Central Civil Pension in website http://pensionersportal.gov.in/FAQ_Civil.pdf, clearly provide for :

a. Commutation Factor as applicable on the date of retirement ;

b. Reduction of Basic Pension, with effect from the date of credit of capital amount of commutation to Bank account, if it is not paid within one month of retirement.

With these provisions, every retiree whose Basic Pension is increased subsequent to retirement on account of various reasons, such as decision of Courts, Errors in calculations, sanction of increments/revision in pay, revision in pay on account of Bipartite Settlements, is entitled to receive commutation amount reduced from the pension/arrears paid between date of retirement and date of payment of commutation amount.

No.38/79/2008-P&PW(G)
Government of India
Ministry of Personnel & Pensioners' Welfare
(Department of Pension & Pensioners' Welfare)

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3rd floor Lok Nayak Bhawan
Khan Market, New Delhi
Dated, 16th February, 2009

OFFICE MEMORANDUM

Subject: Clarification regarding commutation of pension after the implementation of recommendations of 6th CPC

The undersigned is directed to say that in accordance with the instructions contained in this Department's OM No. 38/37/2008-P&PW(A) dated 2nd September, 2008, in the case of those pensioners, in whose case commutation of pension became absolute on or after 1.1.2006 but before the issue of that OM, the pre-revised Table of Commutation Value for Pension will be used for payment of commutation of pension based on pre-revised pay/pension. Such pensioners shall have an option to commute the amount of pension that has become additionally commutable on account of retrospective revision of pay/pension on implementation of the recommendations of the Sixth Central Pay Commission. On exercising such an option by the pensioner, the revised Table of Commutation Value for Pension will be used for the commutation of the additional amount of pension that has become commutable on account of retrospective revision of pay/pension.

2. A number of references have been received in this Department seeking clarifications in regard to various issues relating to commutation of pension in case a pensioner opts for commutation of pension that has become additionally commutable on account of retrospective revision of pay/pension. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure) and the following clarifications are issued in this regard:

S. No.	Points raised	Clarifications
1	What would be the age to be used for commutation of additional commutable pension and which factor would be used for such additional commuted value of pension.	The age reckoned for calculation of commuted value of pension at the time of original application for commutation of pension will apply for calculation of commutation value of additional commutable pension . However, as mentioned in the O.M. dated 2.9.2008, the commutation factor in the revised Table of Commutation Value for Pension will be used for the commutation of the additional amount of pension that has become

		commutable on account of retrospective revision of pay/pension.
2	From which date the reduction in pension on account of additional commutation of pension will take effect?	Reduction in pension on account of additional commutation of pension will be in two stages as per the provisions contained in Rule 6 of the CCS(Commutation of Pension) Rules, 1981.
3.	What will be the date of restoration of additional commutation of pension?	The commuted portion of pension shall be restored after 15 years from the respective dates of commutation as provided in Government of India decision No. 1 under Rule 10 of CCS(Commutation of Pension) Rules, 1981. Necessary endorsement should be made in the PPO.

3. It is impressed upon all the Ministries/Departments of the Government of India to keep in view the above clarification while disposing of the cases of commutation of additional pension. They are also advised to dispose the representations received by them from pensioners on the above issues without referring them to this Department.

4. This issues with the concurrence of Ministry of Finance (Department of Expenditure) vide their UO No.43/EV/2009 dated 13.2.2009.



(M.P.Singh)
Director (PP)
Telefax No. 24624802

To

All the Ministries/ Department of Government of India



Indian Banks' Association

HR & INDUSTRIAL RELATIONS

Cir No.HR&IR/KU/2015-16/G2/1506
October 17, 2015

HR Heads of Public Sector/Private Sector Banks which are parties to Pension Settlement dated 29.10.1993

Dear Sir/Madam,

**LPA No.789/2012 &
LPA 71, 80, 109, 110 & 338/2013 before the High Court of Judicature for the states of
Punjab & Harvana, at Chandigarh on "Updation of Pension" – Judgement dated 9.9.2015**

The above referred Letters Patent Appeal (LPAs) were filed by P C Jain, M C Singla & Other, L R Singla, the Oriental Bank Retired Officers Association, the Punjab & Sind Bank Retired Employees Welfare Association and the Punjab & Sind Bank Retired Officers Association before the High Court Judicature for the States of Punjab & Haryana at Chandigarh.

The appellants put forth in the LPAs that there has been no updation of their pension in the manner contemplated at the time when pension scheme was introduced in the year 1995 pursuant to a settlement reached between the bank employees and the Management (through IBA) on 29.10.1993.

Extracts of the Judgement is reproduced below:

"...24) A Perusal of Clause 12 of the Settlement makes it abundantly clear that it only provides for further negotiations as regards "applicability, qualifying service, amounts of pension, payment of pension, commutation of pension, family pension, updating and other general conditions etc." and cannot be read to provide for updation of pension. Similarly, Regulation 56 deals with a situation where a doubt arises in the matter of application of the pension scheme and mandates to clear that doubt by referring to the "*corresponding provisions of Central Civil Services Rules 1972 or Central Civil Service (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*". No such doubt is shown to exist as could necessitate a reference to corresponding provisions of CCS Rules 1972 or CCS (Commutation of Pension) Rules, 1981 applicable for Central Government employees. Thus Regulation 56 cannot be treated to confer certain benefits upon the appellants, which the RBI's

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Regulations or the CCS Pension Regulations provided for. Further, Clause 17 of the settlement provides that if there is difference of opinion with regard to interpretation of any of the provisions of the settlement, the matter can be taken up at the level of IBA and All Indian Bank Employees Association for discussion and settlement. Presumably this clause impelled the learned Single Judge to observe that it would be open for the applicants to make demand for parity if they are so advised and use their bargaining skills through their associations.

25) Ad finem, a word about minutes of meeting dated 26.3.1994 of the Small Committee on Pension whereby it is said to have been accepted that formula for updating pension should be on the lines of same given in Reserve Bank's Pension Scheme. Discussions held and agreements reached in this meeting, in our view, are nothing more than parleys preliminary to the final decision which came in the form of pension scheme of 1995. Therefore, the minutes cannot vest the appellants with a right to claim parity with employees of Reserve Bank of India. It may be hastily added here that it is the specific stand of the respondents in the written statement that even Reserve Bank of India has withdrawn the order of updation of pension and the matter is pending adjudication before Bombay High Court. This assertion has not been disputed by the appellants by filing a replication to the written statement.

26) Thus, viewed from all angles, appeals are found to carry no substance and are, therefore, dismissed."

A copy of the Judgement is enclosed for your perusal and record.

Yours faithfully,



K UNNIKISHNAN
DEPUTY CHIEF EXECUTIVE