

AIRIEF's SLP on DR Disparity and Pension Updation
(Arising from DHC common judgment dated 27/04/2017 in WP (C) No. 5903 of 2016)

Our SLP was registered in the Supreme Court on 16/08/2017. SLPs by other petitioners were also filed during the same period and were clubbed together by SC as the same were against the common judgment dated 27/04/2017 passed by Delhi High Court. Some SLPs were kept in defect by the registry for one or the other requirements where the defects were cleared by Jan 2018 only by the respective petitioners (AIRIEF's SLP was not in this lot). After removal of defects, all the cases were listed on 16/04/2018 and our Sr Adv requested for early decision or if delayed then to pay interim relief on both the issues. The bench stated that for interim relief also, arguments are necessary. The bench opined to decide the case finally and accordingly fixed next date as 24/07/2018 (in between there was summer vacation). Our SLPs were listed on 24/07/2018, but due to lengthy discussions in an ongoing case of national importance, our case was kept on board continuously till 30/07/2018. On the request of LIC's advocate for adjournment, the bench made it clear that no adjournment would be allowed as the cases were kept on board for final disposal. On 30/07/2018, one of the petitioners had vehemently pressed for an interim relief of implementation of DHC judgment although the designated bench kept reminding that the matter was on board. On the persistence for the demand of implementation of DHC order, the bench reluctantly allowed the Interim Relief. It appears that the request for implementation of DHC judgment dated 27/04/2017 was a planned move to avoid finality as the said petitioner is again insisting for the same old stand, by advising not to be indiscreet in inviting a finality of the SLPs. As understood, he is of the view that benefit of Pension updation cannot be secured through judiciary and a negative verdict would spoil the chances of getting the benefit by negotiations.

I appreciate and respect the contribution of all the activists and experts who have been devoting their time and energy for the cause of the pensioners and hence do not intend to comment on the views of any of such activists and experts. However, as a member of the Legal Study Group of AIRIEF, I have been associated with the case after the DHC judgment and based on my knowledge of the issues, relevant rules, judicial pronouncements related to our case, etc., I would like to share my views, which are as under.

Important Court Judgments on Pension Revision/Updation related matters: There is a plethora of court cases on the Pension Revision related matters. DS Nakara (1983) case is the one which is most often pleaded. However, the D.S. Nakara case was diluted in the case

of Indian Ex-Services League V/S Union of India & Ors. (1991) where the constitutional bench of SC held that this case has limited application and its ambit cannot be enlarged to cover all claims made by pensioners retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for computation of their pension be different. But, later on, the Apex Court has also taken a contrary view in some cases relying on D.S. Nakara's case. In the case of Dhanraj & Ors. V/S State of J&K and others (1994), it was held with reference to government order of J&K, that the distinction between pre and post retirees of June 1981 in payment of pension cannot be justified and it is violative of Article 14 of Constitution. Similarly, in a recent judgement of Hon'ble Court given in the case of Union of India & Anr. V/S SPS Vains (Retd.) & Ors. (2008), the case of D.S. Nakara (Supra) was followed and it was held that the disparity created within the same class i.e., two officers both retired as Major Generals- one prior to 1.1.1996 and other after that date but getting different amounts of pension was arbitrary and that the same also offends Article 14 of the Constitution of India. In the judgment of Kallakurichi Taluk Retired Officials Tamil Nadu and Ors. Vs. State of Tamil Nadu (2013), Supreme Court held that the State Government cannot discriminate between one set of pensioners while calculating the pension. It is further stated that since the component of inflation similarly affects all employees, and all pensioners (irrespective of the date of their entry into service or retirement), it is not per se possible to accept different levels of "dearness pay" to remedy the malady of inflation. Just like the date of entry into service (for serving employees) would be wholly irrelevant to determine the "dearness allowance" to be extended to serving employees, because the same has no relevance to the object sought to be achieved. Likewise, the date of retirement (for pensioners) would be wholly irrelevant to determine the 'dearness pay' to be extended to retired employees. It may be difficult to imagine a valid basis of classification for remedying the malaise of inflation. [In our case there is no concept of Dearness Pay, but the tenet affirmed is equally applicable to our case as it seeks merger of DA/DR while updating basic pension in term of Rule 35 (1)].

Rule 56 of LIC of India (Employees) Pension rules, 1995

It provides that matters relating to pension and other benefits in respect of which no express provision has been made in the LIC Pension Rules, 'shall' be governed by the corresponding provisions contained in the Central Civil Services (Pension) Rules as applicable for Central government employees. Rule 66 of CCS Pension Rules states that pension and family pension 'may' be revised by the Government in accordance with any general order issued in implementation of decisions taken on the recommendations of the Central Pay Commissions, or otherwise.

As per the principles of interpretation of rules, to interpret the legal import of the word 'may' and 'shall', it is of utmost importance that regard must be given to the context, subject matter, and object of the statutory provision to get the real intention of the Legislature. Here, the object of this provision is to extend a pension related benefit and as per several judgments of the SC, when Pension Rules are capable of more interpretations than one, Courts should lean towards that interpretation which goes in favour of employee. (Latest Judgment of SC in SLP © 16734 of 2022).

Issues

- i. Disparity in payment of DR to Pre-Aug. 1997 pensioners is interpreted by different petitioners in different manner. I would like to state the way AIRIEF has interpreted it. Pensioners covered under Para 1 and Para 2 of Annexure IV to the Pension Rules (those retired on or before 31/7/1997), are not given benefit of 100% neutralization of DR, after a given basic pension, whereas the employees retired after 1/8/1997 are given 100% neutralization of DR irrespective of amount of basic pension. This discrimination is violative of Article 14. AIRIEF's resolution to remove the disparity is that Basic Pension of those covered under Para 1 and Para 2 of Appendix IV should be updated and brought to the pay scale prevailing as on 1/8/1997 and then allowing them the rate of DR @0.23%, which is hundred percent neutralization of DR irrespective of amount of Basic Pension. LIC's Board Resolution dated 24/11/2001 is based on the same proposition. While making payment of Interim Relief of 40% as per Para 3A, as directed by the Supreme Court vide the order dated 31/03/2016, LIC adopted the same methodology. This is accepted by DHC also but DHC has prescribed an erroneous solution by applying the rate of Dr @ 0.23% (wherever it is less than 0.23%) to the pensioners covered in Para 1 and Para2 of the Appendix IV, without updating their Basic Pension to the level of CPI 1760, at which the rate of DR @0.23 is calculated.
- ii. Another issue is Pension Updation with every wage revision. I agree that LIC of India (Employees) Pension Rules, 1995 do not contain the provision of periodic revision of pension, but it contains a rule allowing Pension Updation to a section of the pensioners only. So, our case in the court is not to seek enforcement of the precept of OROP by judicial proclamation contrary to the Pension rules, as was erroneously perceived by DHC, but for challenging the rule which is allowing the benefit of Pension Updation to one group of the pensioners only and denying the same benefit to others without any valid grounds. As on the date of notification of LIC of India (Employees) Pension Rules, 1995 there were only 2 groups of pensioners whose pay scales, rate of DA and basis of reckoning number of slabs were known- 1. First group

of those retired between 1/1/1986 to 31/7/1987 (being the employees whose pay scales, rate of DA and number of slabs were calculated at CPI 332, as per the notifications for wage revision ended on 31/07/1987); and 2. The second group of those, retired between wage revision period 1/8/1987 to 31/7/1992 (Pay Scales etc. were calculated at CPI 600). Wage Revision notification for the period 1/8/1992 to 31/7/1997 was notified on 22/02/1996 in the case of Class 3 and 4 employees and on subsequent dates for others classes of employees, i. e. after the Pension rules were made and notified, so this group of employees (who retired during 1/8/1992 to 31/7/1997) was not added in this sub-rule. As per Rule 35 (1), Basic Pension and Additional Pension of the employees who retired between 01/01/1986 to 31/07/1987, was updated by merging DR in the Basic Pension and Additional Pension as per the formula given in Appendix-III, thus, bringing the employees of 1st group almost at par with those of the 2nd group and then allowing same DR at CPI 600 to both the groups, as per Para 1 of Appendix IV. On the same lines LIC proposed to update the pension by adding DR at CPI 1148 and then at 1760 in the basic pension and allow all the pensioners the then existing rate of DR which was 0.23% at CPI 1760 by the Board Resolution dated 24/11/2001, which is kept pending inordinately by GOI.

From above narration, it can be seen that remedy of both the issues lie in Pension Updation with every wage revision, as explained above. As per the provisions of our scheme, DR is calculated as per following formula:

Amount of DR = Basic Pension * rate of DR * number of slabs

All the three variables i.e. Basic Pension, rate of DR and number of slabs are CPI specific. So, DR anomaly cannot be resolved without bringing all the three variables at the same level of Consumer Price Index.

Thus, we are challenging the discriminatory provisions of our pension rules, giving convincing grounds and requesting the judiciary to issue appropriate direction to UOI/LIC to remove the grave discrimination. Apart from above, our Sr Advocate is also assailing legal validity of other Rules/provisions of our Pension Scheme (as stated in our SLP), in the light of constitutional provisions.

Status of our SLP in Supreme Court

Our SLP is in the category of the cases which are for disposal/final disposal at admission stage in the motion hearing. Cases are listed as per the rules of the Supreme Court and the guidelines given from time to time by the Chief Justice of India. It is a matter of chance that

till our number comes, the time is over. But, I am sure that hearing of our SLP will take place shortly. The Petitioners have to be alert and take suitable action to ensure that hearings are not adjourned on the ground of trivial issues. I hope that the decisions taken in joint meeting of the petitioners in Chennai on 2/2/2019, will be honoured by all the petitioners and all efforts will be made for an early favourable judgment. Our members should not fall prey of the unfounded pessimism that even after a favourable judgment, pensioner will not get justice. Being matured and experienced senior citizens, we have to patient and contest the case with all seriousness, sincerity and commitment. At the same time, we should also be ready to accept any judgment passed by the Apex court.

Negotiations and Court Case

This is not correct that the issues cannot be resolved by negotiations pending litigation. Here negotiation means dialogue with the LIC Management and Authorities of UOI. Both the processes are different and may go simultaneously. In the case of PSU Bank Pensioners, case of Hundred Percent Neutralization of DR to Pre-Nov. 2002 pensioners was decided against the pensioners by the Supreme Court vide their judgment dated 16/05/2018 in CIVIL APPEAL NOS.5252-5255 OF 2018. But, the same benefit has been allowed in Jul 2023. In the case of RBI, benefit of Pension Revision was allowed by the Central Government first in 2019 and then again recently to the Pre-Nov 2017 pensioners, though the pensioners writ was pending in Bombay High Court (now disposed of). In the case of LIC pensioners, benefit of 75% subsidy was allowed vide CO Circular No. ZD/1153/ASP/2010 dated 18.05.10 and the case filed on the issue in Ahmedabad HC (SPECIAL CIVIL APPLICATION No. 1168 of 2010) was disposed of thereafter only.

Efforts are on to achieve Pension Updation through negotiations also. But, there appears to be no indications from LIC Management or the Central government that the issue of Pension updation is under consideration. One may be hopeful that some positive developments are there on the issue of Pension Revision in PSU Banks as recently some ex-gratia payment on this account has become the part of their MOU. LIC Pensioners need more hard work on this issue as merely waiting for the developments in PSU banks will not bring them success automatically.

The Interplay between the Industrial Disputes Act 1947 and Section 48 of the LIC Act 1956

Terms and Conditions of service including pension of LIC employees are governed by the Service Rules/Pension Rules made by the Central Government. They are not settlement based. LIC of India (Staff) Regulation, 1960 is also a deemed rule made by the Central government in term of Sec 48 (2A) of LIC of India Act, 1956. It is surprising that even after the amendment in Sec 48 of the LIC Act, 1956, cases related to the service conditions have

been filed in courts under the provisions of ID Act, whose protection was withdrawn vide Sub Sec sub-Section (2C) which states that the rules made under sub-section 2 (cc) and (2A) shall have effect notwithstanding any judgment, decree or order of any Court, tribunal or other authority and notwithstanding anything contained in the ID Act, or in any other law or any agreement, settlement, award or other instrument for the time being in force. This matter has been dealt with in detail by the Supreme Court while adjudicating the Civil Appeal No. 6950 of 2009 and passing order dated 27/04/2022. The issues of the said Civil Appeal are different, but the bench (J DY Chandrachud, J Suryakant and J Vikram Nath) exercising their 'inherent jurisdiction' under Article 142, dealt with the interplay between the ID Act, 1947 and Sec 48 of LIC Act, 1956 as a special reference to nullify the effect of some earlier judgments passed by SC on the basis of incomplete / inaccurate information. This judgment read with the SC judgment in Roshan Lal Tandon Vs. UOI (1967), which distinguishes the set of terms and conditions of services based on settlement and those made by the Government, clearly explains the status of Rules applicable to LIC Employees and pensioners in contrast to those applicable to PSU Bank employees and pensioners.

My purpose of giving this information here is to bring to the notice of our members the correct position of the Service Rules, Pension Rules, Staff Regulations etc. applicable to the LIC employees and pensioners.

M P Agnihotri.

Hyderabad. Mob No. 9618315890 / 9425206198