34(10)/2013/ D(Pay/Services)
Government of India
Ministry of Defence

New Delhi, Dated 24th July, 2014

To
The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

CORRIGENDUM

Sub: Implementation of Hon'ble Supreme Court Order dated 4th September, 2012 in IA No.9 of 2010 in Transfer Petition (C) No.56 of 2007 Union of India and Others versus N.K.Nair & others, etc.

Sir,

I am directed to refer to this Ministry Order No.34 (6)/2012-D (Pay/Services) dt.27th December, 2012 regarding implementation of subject Order of the Hon'ble Supreme Court and to state that as per legal opinion tendered by the Learned Attorney General of India, the sanction of the Government is hereby accorded to modify the provisions of this Ministry’s ibid order as under:

(i) The existing para 6 will be renumbered as 6(A) and would stand revised as under:

In the twelfth line after the word '(integrated scale)', the words “as on 1.1.1986” will be substituted by “w.e.f. 1.1.1986”.

(ii) A new para 6(B) will be added as follows:

6(B) Sanction of the Government is hereby also communicated to modify certain provisions of Special Army Instructions No.2/S/1998 dated 19th December, 1997 and the corresponding Special Instructions pertaining to Navy and Air Force both bearing Nos. 2/S/1998 dated 19th December, 1997, in so far as they relate to deduction of Rank Pay for fixation of revised pay of the concerned officers of Army, Navy and Air Force in the revised scale w.e.f. 01.01.1996. The modifications / amendments in SAI 2/S/1998 and the corresponding instructions for Air Force and Navy are as under:

(a) The existing para 5(a)(ii)) would read as under:

(ii) After the existing emoluments have been so increased, there shall be no deduction of Rank Pay. Thereafter, the officer’s pay will be fixed in the revised scale at the stage next above the amount thus computed.

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(iii) A new para 6(C) will also be added in ibid MoD letter as follows:

6 (C) The pay fixation formula w.e.f. 1.1.2006 as laid down in SAI 2/S/2008 and the corresponding Special Instructions applicable to Air Force and Navy has also been examined in light of the legal opinion tendered by the Learned Attorney General. In the methodology of pay fixation of revised pay w.e.f. 1.1.2006, Rank Pay has not been deducted and has been taken into account along with Basic Pay in the pre-revised scale to arrive at the new, revised pay in the relevant pay band w.e.f. 1.1.2006 whereupon Grade Pay has also been given and an additional component of Military Service Pay (MSP) at Rs. 6000 p.m. is also admissible to the Armed Forces officers up to the rank of Brigadier/eq. As such, the pay fixation formula w.e.f. 1.1.2006 for the relevant officers of the Armed Forces as laid down in the relevant instructions does not require any change.

(iv) Existing Para 7 will be replaced with the following:

7. Except to the extent of modifications as stated in MoD letter No. 34(6)/2012-D(Pay/Services) dated 27.12.2012 and as amended vide this letter, the aforesaid Army Instructions 1/S/87 dated 26.05.1987 and corresponding Air Force Instructions both bearing No.1/S/87 dated 11.06.1987 and 26.05.1987 respectively as amended from time to time and Special Army Instructions No.2/S/98 of 19.12.1997 and the corresponding Special Instructions in case of Navy and Air Force both bearing No.2/S/98 dated 19.12.1997 as amended from time to time, there shall be no change in the provisions of the aforesaid Special Army, Navy and Air Force Instructions of 1987 and 1997 pertaining to the implementation of the recommendations of the 4th and 5th Central Pay Commission respectively.

(v) Existing para 8 will be replaced with the following:

8. As the aforesaid Order of the Hon’ble Supreme Court passed on 04.09.2012 read with their earlier order dated 08.03.2010, has upheld the Order of the Hon’ble Kerala High Court passed on 05.10.1998 in case of Major A.K.Dhanapalan and as the said Order of the Hon’ble Kerala High Court dated 05.10.1998 is for re-fixation of pay without deduction of Rank Pay w.e.f. 01.01.1986, and as this sanction is in compliance with these judicial pronouncements and the legal opinion of the Ld.Attorney General on this issue, it is clarified that there shall be no change in respect of Special Instructions of Army, Navy and Air Force issued on 11.10.2008 (Army) and 18.10.2008 (Navy and Air Force) for implementation of the recommendations of the 6th Central Pay Commission, except to the extent of the need for
re-fixation of pay w.e.f. 01.01.2006, necessitated due to re-fixation of pay w.e.f. 01.01.1986 and 01.01.1996 in terms of these orders.

(vi) All other provisions of the MoD letter No. 34(6)/2012-D(Pay/Services) dated 27.12.2012 remain unchanged.

2. This issues with the concurrence of Ministry of Defence (Finance) vide their UO No. 176/2013-AG/PA (310-PA) dated 23.07.2014 and Ministry of Finance (Department of Expenditure) vide their UO No. 94466/E-III(A)/2014 dated 09.07.2014.

Yours faithfully,

(P.S.Walia)

Under Secretary to the Government of India

Copy to:

Ministry of Defence: DS (Pension)/DFA(AG)/DFA(Navy)/DFA (Air)
Ministry of Finance (Deptt.of Expenditure) - E.III(A) Section, New Delhi.
CGDA, New Delhi
DGA (DS), New Delhi
PCDA(O), Pune
PCDA (P), Allahabad
PCDA (HQ), New Delhi
PCDA (Western Command), Chandigarh
PCDA (Northern Command), Jammu
PCDA (Central Command), Lucknow
PCDA (Southern Command), Pune
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CDA (Army), Meerut Cantt
CDA, Jabalpur
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CDA, Patna
CDA (AF), R.K.Puram, New Delhi
Dy.CDA (AF), New Delhi
PCDA (Navy), Mumbai
NHQ/DPA
Army HQ- AG/PS-3(a)
Air Hqrs. - PP&R-I
Air HQ/Dte of Accts (Pay & Allowances)
Director of Accounts (Postal), APS Accounts Section, Nagpur
Reference Folder
No. 34(6)2012-D(Pay/Services)
Government of India
Ministry of Defence

New Delhi, the 27th December, 2012

To

The Chief of the Army Staff
The Chief of the Air Staff
The Chief of the Naval Staff

Subject: Implementation of Hon'ble Supreme Court order dated 4th September, 2012 in IA No. 9 of 2010 in Transfer Petition (C) No. 56 of 2007 - Union of India and Others versus N.K. Nair and Others, etc.

Sir,

I am directed to invite attention to the Special Army Instructions No. 1/S/87 dated 26th May, 1987 and the corresponding Special Instructions pertaining to Navy and Air Force both bearing Nos. 1/S/87 dt. 11.6.1987 and 26.5.1987 respectively regarding revision of pay scales, fixation of initial pay, etc. in the revised scales implemented w.e.f. 1.1.1986 based on the recommendations of the 4th Central Pay Commission and to say that Para 6 (a) (ii) thereof, while providing for fixation of initial pay in the revised scales, provided that

"After the existing emoluments have been so increased, an amount equivalent to the Rank Pay, if any, appropriate to the rank held by the officer on 01 January 1986 at the rates prescribed in para 3(a) (ii) above, will be deducted.....".

2. The Hon'ble High Court of Kerala at Ernakulam in their order passed on 5th Day of October, 1998 in the matter of OP No.2448 of 1996 – N filed by Major A K Dhanapalan, had directed as under:-

"Under these circumstances, the respondents 2 & 3 are directed to re-fix the pay of the petitioner with effect from 1.1.1986 without deducting the rank Pay of Rs.200 as has been done by the Respondents 2 & 3".

3. The appeal No. WA 518 of 1999 filed by the Ministry of Defence, Government of India, was dismissed by the Hon'ble High court of Kerala at Ernakulam vide their order of 4th day of July, 2003. Subsequently, after the
dismissal of SLP by the Hon'ble Supreme Court, the above direction of the Hon'ble High Court of Kerala was implemented by this Ministry, fixing the pay of the petitioner w.e.f. 1.1.1986 without applying the aforesaid provision contained in para 6 (a) (ii) of the aforesaid Special Army Instruction of 26th May 1987, i.e. without deducting the Rank Pay as appropriate to the petitioner as on 1.1.86.

4. Subsequently, the Hon'ble Supreme Court, vide their order dated 8.3.2010, in the Transfer Petition (C) No.56 of 2007 and linked matters, directed as under:

"We have carefully perused the judgement dated 5.10.1998 of the LD. Single Judge as well as judgement dated 4.7.2003 of the Division Bench of the High Court of Kerala and we respectfully agree with the reasoning given therein for grant of Rank Pay retrospectively from 1.1.1986. We also direct interest be paid thereon at 6% p.a."

5. The Hon'ble Supreme Court in their subsequent order passed on 4th September, 2012 in the matter of IA No.9 of 2010 in Transfer Petition (C) No.56 of 2007 has directed as under:

"On thoughtful consideration of the entire matter, we are satisfied that the order dated March 8, 2010 does not require any modification or variation save and except the interest part. As regards interest, on totality of the circumstances including the circumstance that Special Leave Petition arising from the judgement dated July 4, 2003 in the matter of Major A.K. Dhanapalan was dismissed by this Court in August, 2005 and the Kerala High Court had not ordered payment of interest on the arrears of pay, we direct that the interest shall be paid by the petitioners to the respondents @ 6% p.a. from January 1, 2006 instead of January 1, 1986. It is clarified that this order shall govern all similarly situated officers who have not approached the Court and also those who have filed Writ Petitions which are pending before various High Courts/Armed Forces Tribunal."

6. Accordingly, in compliance with the aforesaid Order of the Hon'ble Supreme Court passed on 4.9.2012 read with their earlier order dated 8.3.2010, upholding the Order of the Hon'ble Kerala High Court passed on 5.10.1998 in case of Major A K Dhanapalan, which has also directed that the order shall govern all similarly situated persons, the sanction of the Government is hereby communicated to modify the provisions contained in para 6(a)(ii) of the Special Army Instructions of 26th May, 1987, and corresponding instructions in case of Navy and Air Force bearing both bearing No. 1/S/87 dt 11.6.1987 and 26.5.1987 respectively, insofar as it relates to deduction of Rank Pay, which has been reproduced in para 1
above, and to re-fix the initial pay of the concerned officers of Army, Navy and Air Force in the revised scale (integrated scale) as on 1.1.1986 as per para 6 of those instructions without deduction of Rank Pay appropriate to the rank held by the officer on 1st January, 1986 from the amount as worked out under para 6(a)(i) thereof.

7. Except to the extent of modification of the provision contained in para 6(a)(ii) of the aforesaid Army Instructions and corresponding Navy and Air Force Instructions both bearing No 1/S/87 dated 11.6.1987 and 26.5.1987 respectively relating to deduction of Rank Pay in terms of these orders, which is in complete compliance of the aforesaid judicial pronouncement, in all other respects there shall be no change in the provisions of the aforesaid Special Army, Navy and Air Force Instructions of 1987 pertaining to the implementation of the recommendation of the 4th Central Pay Commission.

8. As the aforesaid Order of the Hon'ble Supreme Court passed on 4.9.2012 read with their earlier order dt. 8.3.2010, has upheld the Order of the Hon'ble Kerala High Court passed on 5.10.1998 in case of Major A.K.Dhanapalan and as the said Order of the Hon'ble Kerala High Court dt. 5.10.1998 is for re-fixation of pay as on 1.1.1986, and as this sanction is in compliance with these judicial pronouncements, it is clarified there shall be no change in respect of Special Instructions of Army, Navy and Air Force issued on 19.12.1997 and 11.10.2008 (Army) and 18.10.2008 (Navy and Air Force) for implementation of the recommendations of the 5th and 6th Central Pay Commission respectively, except to the extent of the need for re-fixation of pay as on 1.1.1996 and 1.1.2006, necessitated due to re-fixation of pay as on 1.1.1986 in terms of these orders.

9. Dearness Allowance, Interim relief, Dearness Pay and Non-Practising Allowance in respect of AMC/ADC/RVC officers will be revised.

10. Pensionary benefits due to the re-fixation of pay as above, if any, will be admissible as per rules on the subject. Fresh LPC cum Data Sheet for this purpose will be issued. PPO revising the pension will be issued to all the concerned.

11. As directed in Hon'ble Supreme Court order dated 4th September, 2012, interest @ 6% per annum on the arrears will be paid with effect from 1.1.2006.

12. All affected officers/pensioners have to give an undertaking at the time of disbursement of arrears as per Appendix 'A' to the effect that any excess payment that may be found to have been made as a result of incorrect re-fixation of pay/pension will be refunded by him/her to the Government either by adjustment against future payments or otherwise.
13. All departments/offices involved in re-fixation of pay under these orders are hereby directed to process the cases at highest priority so that arrears, if any, are paid at the earliest. The Head of the Department/Office will be personally accountable for any avoidable delay in revision of pay/pension or payment of arrears as the case may be. Offices of PCDA(O), Pune, Naval Pay Office, Mumbai and Air Force Central Accounts Office, Delhi Cantt will appoint Nodal Officers to whom the affected officers may contact for information, if any.

14. Paying authorities and the Service HQrs. will work in tandem, wherever required, in implementing the Hon’ble Supreme Court order.

15. In partial relaxation of Serial No. 3 of Appendix ‘A’ to Ministry of Defence letter No. IC/1027/32/AS (J)/6884/2006 dated 1st September, 2006 for fast track implementation of the court judgement in this case wherein a large number of officers are affected, the payment will be made directly by PCDA(O)/AFCAO/Naval Pay Office. Ex-post facto sanction will be granted by Ministry of Defence on quarterly basis under Charged Expenditure based on audit/payment reports rendered by CDA(O)/AFCAO/Naval Pay Office and the cases for the sanction will be processed by AG Branch/COP/AOP with Ministry of Defence.


Yours faithfully,

(Praveen Kumar)
Director (AG.I)

Copy to:-

Ministry of Defence: DS (Pension)/ DFA (AG)/ DFA (Navy)/ DFA(Air)
Ministry of Finance (Deptt.of Expenditure) (E.III (A) section, New Delhi
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Army Headquarters - AG/PS-3 (a)
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Dy CDA (AF), Subroto Park, New Delhi
PCDA (Navy), Mumbai
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PCDA (P), Allahabad
PCDA (HQ), New Delhi
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CDA, Chennai
CDA, Guwahati
CDA, Jabalpur
Director of Accounts (Postal), APS Accounts Section, Nagpur
REFERENCE FOLDER

UNDERTAKING

I hereby undertake that any excess payment that may be found to have been made as a result of incorrect re-fixation of pay/pension or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

Signature

Name:

Rank:

Service No.

PPO No.

Branch:

Unit:

Date:

Place: