

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 Ernakulum 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 Ernakulum 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, refixing 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)/6864/2006 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.

16. This issues with the concurrence of Ministry of Defence (Finance) vide their Dy. No. 8(13)/2012-AG/PA (583-PA) dated 27.12.2012 and Ministry of Finance (Department of Expenditure) vide their Dy. No. 187654/E.III (A)/2012 dated 24.12.2012.

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
CGDA, New Delhi
DGA (DS), New Delhi
Army Headquarters - AG/PS-3 (a)
Air Headquarters - PP & R-1
Naval Headquarters /DPA
Air HQrs/Dte of Accts (Pay & Allowances)
CDA (AF), West Block V, R.K.Puram, New Delhi
Dy CDA (AF), Subroto Park, New Delhi
PCDA (Navy), Mumbai

PCDA (O), Pune
PCDA (P), Allahabad
PCDA (HQ), New Delhi
PCDA (Southern Command), Pune
PCDA (Western Command), Chandigarh
PCDA (Northern Command), Jammu
PCDA (Eastern Command), Kolkata
PCDA (Central Command), Lucknow
CDA (Army), Meerut Cantt.
CDA, Bangalore
CDA, Patna,
CDA, Secundarabad
CDA, Chennai
CDA, Guwahati
CDA, Jabalpur
Director of Accounts (Postal), APS Accounts Section, Nagpur
REFERENCE FOLDER

Appendix 'A' to MOD letter No. 34(6)2012-D(Pay/Services) dated 27.12.2012 as referred to in Para 12.

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: