



FINANCE (PGC) DEPARTMENT

G.O.No.363, Dated:23rd August, 2013

(*é #a, Mtâ .-7, ÂUtÿS t®M©L 2044*)

Pension – Treatment of Dearness Allowance as Dearness Pay for the purpose of pension revision – Implementation of the Judgement Orders of the Hon'ble Supreme Court of India, dated 17.1.2013 in SLP Nos.8848-8870/2012 filed by Kallakurichi Taluk Retired Official Association and other Associations/ Individual Appellants by extending the orders issued in G.O. Ms. No.272, Finance (Pension) Department, dated 15.6.1998 to those retired between 1.6.1988 and 31.12.1995 – Orders - Issued.

Read:-

1. G.O. Ms.No.317, Finance (Pension) Department, Dated: 11.3.1970
2. G.O. Ms.No.115, Finance (Pension) Department, Dated: 06.2.1975
3. G.O. Ms.No.371, Finance (Pension) Department, Dated: 30.4.1986
4. G.O. Ms.No.810, Finance (Pay Commission) Department, Dated: 9.8.1989
5. G.O. Ms.No.713, Finance (Pay Commission) Department, Dated:28.6.1990
6. G.O. Ms.No.911, Finance (Pension) Department, Dated: 4.12.1991
7. G.O. Ms.No.511, Finance (Pension) Department, Dated: 26.7.1993
8. G.O. Ms.No.174, Finance (Pay Cell) Department, Dated 21.4.1998
9. G.O. Ms.No.272, Finance (Pension) Department, Dated: 15.6.1998
10. G.O. Ms.No.273, Finance (Pension) Department, Dated: 15.6.1998
11. G.O. Ms.No.235, Finance (Pay Cell) Department, Dated: 1.06.2009
12. Judgement Order of the Hon'ble Supreme Court of India dated 17.1.2013 in Civil Appeal Nos.8848 to 8870/2012 filed by Kallakurichi Taluk Retired Official Association and other Associations/ Individual Appellants.

ORDER:

In the Government Order first read above, orders have been issued to the effect that Dearness Allowance as on 1.12.1966 be included as a component of wages for calculation of average emoluments for determining pension to those retired between 26.2.1970 and 1.10.1970 based on Government of India pattern.

2. In the reference second read above, orders were issued treating Dearness Allowance actually drawn by the employees retiring on or after 1.2.1975 during the last 10 (ten) months prior to the date of retirement as pay for calculating pension.

3. The Fourth Tamil Nadu Pay Commission, among others has recommended that at the end of a period of three years, the Dearness Allowance sanctioned upto that period could be added as Dearness Pay in order to ensure a reasonable pension level. Accordingly, orders were issued in the reference third read above to the effect that Government Servants who will be retiring on or after 1.10.1987, (i.e) three years from the date of implementation of Pay Commission recommendation of 1.10.1984, the Dearness Allowance drawn during the last 10 months preceding the date of retirement shall be reckoned as Dearness Pay for the purpose of pensionary benefits, viz. pension, family pension and Death cum Retirement Gratuity. Subsequently, this has been amended to the effect that in the case of Government Servants retiring on or after 1.10.1987, the Dearness Allowance sanctioned upto 30.09.1987 shall be treated as Dearness Pay and counted for pensionary benefits.

4. Subsequently based on the abovesaid Government Orders and a series of Judicial pronouncements made by the Tamil Nadu Administrative Tribunal, Hon'ble High Court and the Hon'ble Supreme Court, the Government in their orders first, second, sixth, seventh and ninth read above extended the benefit of conversion of dearness allowance as dearness pay in exercise of powers under Rule 30 of the Tamil Nadu Pension Rules, 1978 to all employees who retired prior to 01.6.1988 in the following manner:

- (i) For those retired between 1.12.1966 and 1.10.1970 – dearness allowance as drawn on 1.12.1966 would be treated as dearness pay.
- (ii) For those who retired after 2.10.1970 upto 30.9.1987 – dearness allowance as drawn in the last ten months before retirement would be treated as dearness pay.
- (iii) For those retired between 1.10.1987 to 31.5.1988, the Dearness Allowance, Additional Dearness Allowance sanctioned from time to time upto 30.9.1987 would be treated as dearness pay.

5. Consequent on the recommendations of the Fifth Tamil Nadu Pay Commission the revised Central pay scales as per Fourth Central Pay Commission were implemented with effect from 1.6.1988. The Fourth Central Pay Commission scales have been implemented to the Central Government employees with effect from 1.1.1986 by merging the Dearness Allowance at the rate of 608 points of All India Consumer Price Index. Though the Fifth Tamil Nadu Pay Commission has recommended revision of pay structure with reference to All India Consumer Price Index at 748 points, the Government decided to follow the pattern adopted by the Central Government in revising the pay and Dearness Allowance structure of their employees. The Central scales of pay was implemented to State Government employees on 1.6.1988 when the All India Consumer Price Index was 687 points as against the 608 points merged by the Fourth Central Pay Commission. Hence to bridge this gap, the difference in All India Consumer Price Index points was considered as “Dearness Pay” to set right the anomaly of lesser emoluments in the revised pay. Accordingly, orders were issued in para-3 of the Government Order fourth read above for those retired between 1st October 1987 to 31st May, 1988 and after 1st June, 1988, treating dearness allowance as dearness pay at the following rates:

	Pay range (1)	Rate of dearness pay (2)
(i)	upto Rs.3,500	13 per cent of pay
(ii)	above Rs.3,500 but not exceeding Rs.6,000	9 per cent of pay subject to a minimum of Rs.455
(iii)	above Rs.6,000	8 per cent of pay subject to minimum of Rs.540

6. Certain pensioners/ Pensioner's Association, challenged the cut-off date stipulated in the Government Orders fourth, ninth and tenth read above and filed certain O.A.s in the erstwhile Tamil Nadu Administrative Tribunal and the same were transferred as writ petitions to the Madras High Court. The main relief sought by the writ petitioners is to treat Dearness Allowance as Dearness Pay for the purpose of pension calculation for all those retired in the period between 01.06.1988 and 31.12.1995 on the analogy of the orders issued in Government Orders third, ninth and tenth read above.

7. The Government has preferred appeal against the above judgement orders. In the judgement order dated 17.12.2007 in W.A.1002 of 2006, W.A.9 and 95 of 2007, Hon'ble Division Bench has allowed the Writ Appeal filed by the Government.

8. Aggrieved by the orders issued in the above writ appeal, Thiru.N.Subramanian and others filed SLP No.20887 of 2008 and the Kallakurichi Taluk Retired Official Association and others have filed SLP No.18020-18021 of 2008. The main prayer in the above Special Leave Petitions is to grant the benefit issued in the Government Orders ninth and tenth read above to all the pensioners retired between 1.6.1988 and 31.12.1995 with all the consequential pensionary benefits.

9. The Hon'ble Supreme Court in its order dated 17.1.2013 has ordered that:

"The instant appeals are accordingly allowed. The impugned order dated 17.12.2007 passed by the High Court is hereby set aside. The impugned Government Order dated 9.8.1989, to the extent that it extends to employees who retire on or after 1.6.1988, a lower component of 'dearness pay', as against those who had retired prior to 1.6.1988, is set aside, being violative of Articles 14 and 16 of the Constitution of India".

10. While delivering the above judgment, the Hon'ble Supreme Court of India has also made the following observations:

i) "The instant controversy should not be misunderstood as a determination of the total carry home pension of an employee. 'Dearness Pay' is one of the many components, which go into the eventual determination of pension. Therefore, the focus in the adjudication of the present controversy must be on

'Dearness Pay', rather than on the eventual carry home pension".

- ii) "Most importantly, the financial constraints of the State Government were not described as the basis/reason for the classification made in the impugned Government Order dated 9.8.1989".
- iii) "...the State Government has the right to choose whether or not 'dearness allowance' should be treated as 'dearness pay'. As such, it is open to the State Government not to treat any part of 'dearness allowance' as 'dearness pay'. In case of financial constraints, this would be the most appropriate course to be adopted. Likewise, the State Government has the right to choose how much of 'dearness allowance' should be treated as 'dearness pay'".

11. In implementing the orders of the Hon'ble Supreme Court, the Government has considered the following factors:-

- i) The Government of Tamil Nadu with effect from 1.6.1988 has already adopted the Central Pay Commission system under which, there would be an automatic revision of the basic pension as and when pay revision is taken up unlike in the period prior to this. It is on this basis that the basic pension has been revised upwards by 40% for all existing pensioners with effect from 1.1.1996 and 1.1.2007 when the Government of Tamil Nadu has ordered pay revisions. Government of Tamil Nadu adopted Government of India pay scales and pay and pension fixation that entails automatic pension revision vide orders issued in the reference eighth and eleventh cited.
- ii) There could be employee discontent if the pensions of two persons retiring from the same post with full qualifying service, after 6 months of each other within the same Pay Commission period varies due to dearness allowance increase.
- iii) The appellants before the Hon'ble Supreme Court had sought for the extension of orders issued in the Government Order third read above, which allowed merger of the Dearness Allowance drawn with three yearly lags for the period beyond 30.9.1990 i.e. the next spell of three years from 1.10.1990 to 30.9.1993.
- iv) The expenditure on pension has increased manifold and in 2006-2007, the number of pensioners was 5,60,168 and expenditure was Rs.5442 crore. In 2011-2012 the number of pensioners increased to 7,53,890 and pension expenditure is Rs.12,273 crore. Pension and retirement benefits expenditure was 5.9% of total revenue expenditure in 1990-1991 and 14.7% in 2011-2012 and it is estimated that it may reach 20.5% during 2030-2031. With a view to curtail the expenditure on pension, Government have implemented the New Contributory Pension Scheme with effect from 1.4.2003 (Defined Contribution Funded Pension

Scheme). Due to legal interventions a number of Government Orders have been issued which has increased the expenditure on pension liability to the State Government which is unsustainable in the long run. Further, retrospective increases in the pensionary entitlements and benefits create issues of inter-generational equity.

12. The State Government, based on the recommendations of the Fifth Tamil Nadu Pay Commission has extended Central scales of pay to its employees with effect from 1-6-1988. Subsequently, the next two Pay Commissions were implemented with effect from 1-1-1996 and 1-1-2006 by merging the same quantum of Dearness Allowance drawn by the serving employees and the pensioners following the Government of India pattern. Hence, automatic pension revision has been allowed to the pensioners as in the case of serving personnel. After the implementation of the subsequent Central Scales of pay, the question of merging the Dearness Allowance as Dearness Pay for pensionary benefits during the subsequent pay commission period 1-1-1996 does not arise. Further, to protect pensioners against inflation, they are also granted periodic percentage increases in the dearness allowance on pension on par with serving employees drawing salaries.

13. The orders issued in Government Order fifth read above provided that the treatment of those who retired before 1.6.1988 and between 1.6.1988 and 31.3.1989 should be the same. The principle adopted was that in case any person retiring after 1.6.1988 but before 31.3.1989 (Fifth Tamil Nadu Pay Commission period) would have drawn higher emoluments at the time of retirement based on the Fourth Tamil Nadu Pay Commission pay scales and Dearness Allowance applicable compared to the revised pay fixed along with the applicable percentage of Dearness Allowance they were allowed to draw the difference in pension as "personal pension". The Government are of the view that a similar approach for those who retired between 1.4.1989 and 31.12.1995 wherein those who retired after 1.6.1988 but would have had higher emoluments based on the Fourth Tamil Nadu Pay Commission pay scales and applicable Dearness Allowance and Additional Dearness Allowance as against the Fifth Tamil Nadu Pay Commission pay scales and prescribed Dearness Allowance conversion as Dearness Pay (13% - upto Rs.3,500/-, 9% - above Rs.3,500/- and upto Rs.6,000/-, 8% - above Rs.6,000/-) and allowed pension based on higher emoluments would ensure that the Supreme Court's orders are complied with and there is no discrimination based on the cut off date of 1.6.1988.

14. After careful consideration, the Government has decided to implement the orders of the Hon'ble Supreme Court of India, by extending the benefit of the orders issued in the reference ninth read above, to those who retired on or after 1.6.1988 upto 31.12.1995 with reference to the pre-revised scales of pay (i.e. scales of pay that existed prior to 1.6.1988). Accordingly, Government direct that:

- (i) the pensioners who have retired between 1.6.1988 and 31.12.1995 shall be permitted to compute average emoluments notionally for the calculation of pension based on the Fourth Tamil Nadu Pay Commission scales of pay and with reference to the Dearness Allowance and Additional Dearness Allowance applicable in the pre-revised scale of pay

sanctioned from time to time as Dearness Pay for the entire 10 months preceding retirement;

- (ii) further, such of the pensioners who retired between 1.6.1988 and 31.12.1995 shall have the option to opt for the above formula or to retain the current pension, whichever is advantageous to them;
- (iii) if the option is exercised for the pre-revised scale to calculate the pension, the excess pay and allowances and terminal benefits, if any, drawn by them in the revised scale of pay prior to their retirement shall be waived as a special case. To this effect, necessary amendment to Rule 30 of the Tamil Nadu Pension Rules, 1978 will be issued separately.

15. As the revision of pension ordered above is based on the option to be exercised by the pensioners retired to their advantage, the above orders shall be eligible to all those pensioners retired between 1.6.1988 and 31.12.1995 and who are alive on the date of issue of this order. In the case of employees retired between 1.6.1988 and 31.12.1995, such retirees opting for the benefit ordered in para 14 above, the pay of such employees shall be regulated in the Fourth Tamil Nadu Pay Commission scales of pay (pre - 1988 pay scale) by the pay fixing authorities notionally where the employees last served. After revising the pay of such employees the proposals for pension/ family pension revision of the above retired employees shall be forwarded by the Departmental Officers directly to the Office of the Accountant General for authorising the entitled pension. Such pensioners are also entitled for the subsequent pension revisions ordered in G.O.Ms.No.174, Finance (Pay Cell) Department, dated:21.4.1998 and G.O.Ms.No.235, Finance (Pay Cell) Department, dated:1.6.2009 which shall be done by the Treasury Officers/ Sub Treasury Officers/ Pension Pay Officer concerned.

16. The applicable rates of Dearness Allowance at the rate of 608 points of All India Consumer Price Index and Additional Dearness Allowance admissible from time to time along with illustration are appended to this order.

(BY ORDER OF THE GOVERNOR)

K. SHANMUGAM

PRINCIPAL SECRETARY TO GOVERNMENT.

To

All Secretaries to Government.

All Departments of Secretariat.

The Legislative Assembly Secretariat, Chennai - 600 009.

The Governor's Secretariat, Raj Bhavan, Chennai - 600 022.

The Tamil Nadu Information Commission, No.2, Thiyagaraya Salai, Eldams Road Junction, Teynampet, Chennai-18.

All Heads of Departments.

The Accountant General (A&E), Chennai - 600 018. (By name)

The Accountant General (A&E), Chennai - 600 018.

The Principal Accountant General (Audit-I), Chennai - 600 018.

The Accountant General (Audit-II), Chennai - 600 018.

The Accountant General (CAB), Chennai - 600 009.

The Registrar, High Court, Chennai - 600 104.
 The Secretary, Tamil Nadu Public Service Commission, Chennai - 600 003.
 The Commissioner, Corporation of Chennai / Madurai / Coimbatore / Tiruchirappalli / Salem /
 Tirunelveli/ Erode / Tirupur / Vellore / Thoothukudi.
 All District Collectors / District Judges / Chief Judicial Magistrates.
 All Regional Joint Directors of Treasuries and Accounts Department.
 The Pension Pay Officer, Chennai - 600 006.
 All Treasury Officers / Sub-Treasury Officers.
 All State Government owned Boards / Corporations.

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The Finance (OP.I/OP.II/OP.III/OP.M/Pension/PC/BG.II/Bud.Misc. / Public),
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 The Secretary to Chief Minister, Chennai-600 009.
 The Director of Pension, D.M.S. Complex, Chennai - 600 006.
 The Director of Treasuries and Accounts, Chennai - 600 015.
 The Director of Local Fund Audit, Chennai - 600 108.
 All Municipal Commissioners.
 All Panchayat Union Commissioners.
 The Reserve Bank of India, Chennai - 600 001.
 All Head Offices / Regional Offices of Public Sector Banks
 through the Director of Pension, D.M.S. Complex, Chennai - 600 006.
 All Public Sector Banks through the Director of Pension, D.M.S. Complex, Chennai - 600 006.
 The President, Tamil Nadu Retired Officials Association, D.P.I. Complex, Chennai –
 600006.
 The President, Tamil Nadu Secretariat Retired Officers Association, No.70, Medavakkam
 Tank Road, Kilpauk, Chennai - 600 010.
 The President, All India Federation of Pensioners' Association, No.22, Kavarai Street,
 Saidapet West, Chennai - 600 015.
 The President, The Retired Teachers Association, No.12, Abayambalpuram,
 Mayiladuthurai, Nagapattinam District.
 The State President, All Bharat Confederation of Senior Citizens and Pensioners,
 No.7, Bharathidasan Street, Avinashi, Coimbatore District.
 The President, The Indian Officers Association, No.35, Thiru Vi Ka High Road,
 Royapettah High Road, Chennai - 600 014.
 The President, Tamil Nadu Senior Citizens' Association, No.V.95, Anna Nagar,
 Chennai – 600 040.
 The President, Tamil Nadu Senior Citizens and Pensioners Welfare Association, No.38-B,
 First Main Road, Perumalpuram, Tirunelveli.
 The President, Retired Officials Association, Narayanarao Building, Muthu kalathi Street,
 Triplicane, Chennai-600 005.
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Section Officer

ANNEXURE-I**Rates of Dearness Allowance applicable to the pre-revised scale of pay for the period between 1.6.1988 and 31.12.1995****D.A. at 608 points of All India Consumer Price Index**

Basic Pay upto Rs.1,100/-	15 % (Fifteen Percent)
Basic Pay above Rs.1,100/-	12 % (Twelve Percent) Subject to a minimum of Rs.165/- and a maximum of Rs.300/-

-/True Copy/-

**Section Officer**

ANNEXURE – II

Rates of Additional Dearness Allowance applicable from time to time for the period from 1.6.1988 to 31.12.1995

Sl. No.	G.O.No./Date of Finance Department	Basic Pay (*) upto Rs.3500	Basic Pay (*) above Rs.3500	
			Rate of D.A	Subject to a Minimum
1.	388/30.5.88 w.e.f. 1.1.88	18	13	630
2.	756/28.10.88 w.e.f. 1.7.88	23	17	805
3.	666/27.6.89 w.e.f. 1.1.89	29	22	1015
4.	1069/27.9.89 w.e.f. 1.7.89	34	25	1190
5.	305/28.3.90 w.e.f. 1.1.90	38	28	1330
6.	1101/13.10.90 w.e.f. 1.7.90	43	32	1505
7.	263/3.4.91 w.e.f. 1.1.91	51	38	1785
8.	807/28.10.91 w.e.f. 1.7.91 read with G.O.Ms.No.361/ 21.5.92	60	45	2100
9.	361/21.5.92 w.e.f. 1.1.92	71	53	2485
10.	812/19.10.92 w.e.f. 1.7.92	83	62	2905
11.	369/21.5.93 w.e.f. 1.1.93	92	69	3220
12.	735/22.10.93 w.e.f. 1.7.93	97	73	3395
13.	380/4.5.94 w.e.f. 1.1.94	104	78	3640
14.	855/17.10.94 w.e.f. 1.7.94	114	85	3990
15.	354/8.5.95 w.e.f. 1.1.95	125	94	4375
16.	777/5.10.95 w.e.f. 1.7.95	136	102	4760

Note:-

(*) Basic Pay includes Dearness Allowance at 608 points of All India Consumer Price Index.

-/True Copy/-

A. Jamilkelvi
Section Officer

ANNEXURE – III**Illustration**

An employee in the pre-1.6.88 (Fourth Pay Commission Scales of pay) was drawing a basic pay of Rs.1985/- in the pay scale of Rs.1340-2435. The corresponding revised scale of pay is Rs.2200-8000. His date of increment is 1st October and his date of retirement is 30.6.1993. The individual has rendered a net qualifying service of 33 years.

The revised pension is worked out as shown below:-

Average Emoluments Period = 1.9.1992 to 30.6.1993

Pay regulation on exercising option

Pay in the pre revised scale of pay (Rs.1340- 2435) as on 31.5.1988 Rs.1985. (after sanction of subsequent increments)	Revised pay drawn as per G.O.666, Finance (Pay Cell) Department, dated:27.6.1989 (in the scale of Rs.2200-4000)
w.e.f. 1.09.1992 Rs. 2345	Rs.2900
w.e.f. 1.10.1992 Rs. 2435	Rs.3000

I. Average Emoluments (revised pay):

1.09.92 to 30.09.92 = 2900+ 377 (13%)	= 3277x1 =	3277
1.10.92 to 30.06.93 = 3000+ 390 (13%)	= 3390x9 =	30510

	Total:	33787

AE = Rs.3379; Revised pension = Rs.1690/pm w.e.f.1.7.1993

II. Average Emoluments (in pre revised pay)

	<u>D.A.@</u>	<u>A.D.A.@</u>	
1.09.92 to 30.09.92 = 2345+ 281 (12%) + 2180 (83%) = 4806x1 =			4806
1.10.92 to 31.12.92 = 2435+ 292 (12%) + 2263 (83%) = 4990x3 =			14970
1.01.93 to 30.06.93 = 2435+ 292 (12%) + 2509 (92%) = 5236x6 =			31416

		Total:	51192

AE = Rs.5119, Revised Pension = Rs.2560/pm w.e.f. 1.07.1993

Difference = Rs.2560 – Rs.1690 =Rs.870

Net Increase in pension w.e.f. 1.07.1993 – Rs.870/- p.m.

-/True Copy/-

A. Jamilzeli
Section Officer