



Civil Aviation Employees' Guild (India)

Ref. No.: CAEG/101/12

Shri Shiva Gopal Mishra
Secretary, Staff Side National Council (JCM)
13-C Ferozshah Road
New Delhi-110001



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Subject: Denial of superannuation Pension under clause 1(a) of Department of Pension OM No.4/18/87-P&PW (D) dated 05.07.89 due to Provident Fund scam- Closure of CBI FIR RC2 (3)/2007/EOW-I/DLI without recovering provident fund siphoned in scam.

Respected Sir,

Consequent upon conversion of Government Departments into Public Sector Undertakings (PSUs) /Autonomous bodies, Central Government employees absorbed in Central PSUs/Autonomous bodies are eligible to retain GPF cum Pension scheme under clause 1(a) of Department of Pension & Pensioners' Welfare Office Memorandum **No.4/18/87-P&PW (D) dated 05.07.89**. On constitution of National Airports Authority (NAA) 8400 Civil Aviation Department (**CAD**) Employees working under DGCA were en masse transferred to NAA from 01.06.86 under section 13(3) of NAA Act 1985. These employees were permanently absorbed in NAA on 02.10.89 under GPF cum pension scheme. Right to retain GPF cum Pension scheme on absorption in PSU is an irrevocable and Fundamental right of absorbee under article 21 of Constitution of India.

International Airports Authority (IAAI) Act, 1971 & National Airports Authority (NAA) Act, 1985 were repealed on 16.09.1994 and Airports Authority of India (AAI) was constituted on 01.04.1995 under section 3 of AAI Act, 1994 (**55 of 1994**). Erstwhile Authorities constituted under IAAI Act, 1971 (**43 of 1971**) and NAA Act 1985 (**64 of 1985**) became two divisions namely International Airports Division (IAD) & National Airports Division (NAD) under clause (a) & (b) of section 18(1) of AAI Act, 1994. Employees working under NAD & IAD were governed by respective service condition as existing in erstwhile IAAI & NAA.

Superannuation benefits of Govt. absorbees are governed by O.M. 05.07.89 and those recruited by NAA & IAAI are governed by respective CPF Regulations published in gazette of India under section 37 of IAAI Act, 1971 & section 38 of NAA Act, 1985. Irrevocable PF Trusts of erstwhile NAA & IAAI were continuing on constitution of AAI on 01.04.1995 in terms of section 18 (6) of AAI Act, 1994 which is reproduced below:-

18 (6) The trusts of the provident fund and group insurance and superannuation scheme of the International Airports Authority or the National Airports Authority and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the Authority as was being done hitherto in the International Airports Authority or the National Airports Authority and tax exemption granted to Provident Fund or group Insurance and superannuation scheme would continue to be applied to the Authority.

CCS Pension Rules are regulated by Department of Pension & Pensioners' Welfare but AAI on its own issued order **A.38020/2/95-Pen dated 14.08.1995** stating that less than 10 years absorbees are not eligible to retain Govt. Pension scheme at par with their colleague having more than 10 years service in Govt. This order was challenged before Delhi High Court in writ petition (c) 4599/1995. **Cont...2**

In 2005 print media reported scam in PF Trust of NAA. GPF of Govt. absorbees, was being deposited in this Trust. CBI registered PE in this scam on 28.02.07 and formal **FIR RC2 (3)/2007/EOW-I/DLI** was filed on 28-09-07. To cover up this scam a criminal conspiracy was hatched by Airports Authority in connivance with Additional Provident Fund Commissioner Central (NZ) **Shri S K Khanna** who is also charge sheeted by CBI in 169 crores PF Scam of M/s B L Kashyap & Sons. **Shri Vilas Bhujang G.M (Pers.)** informed Shri S K Khanna on 17.08.2007 that rules for superannuation benefits of AAI employees are not framed after 01.04.95. After approval of Shri Khanna, Regional PF Commissioner Delhi (North) issued coverage of EPF Act, 1952 on AAI.

Employees Pension scheme 1995 of EPF Act, 1952 was imposed without & with wage ceiling (Rs. 6500/-) under option A & B and no option for pension from employees was treated as deemed option under option B. This amount to contempt of Parliament under section 18(6) of AAI Act, 1994 & section 16 1(c) of EPF Act 1952, cited below:-

"16. This Act shall not apply to-

1(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;"

Airports Authority denied prosecution sanction to CBI in PF scam for its 8 employees but how 7 private persons managed closure of CBI FIR is still a mystery? Shri K K Jha IRS (IT-1979) former Director, Department of Personnel & Training & son in law of former Chief Minister of Bihar Shri Jagannath Mishra joined Board of Airports Authority of India on 16.01.2009 as Member (Personnel. & Administration).

To destroy records of this scam, irrevocable CPF Trusts of IAAI & NAA formulated under respective delegated legislation were dissolved and unified illegal Trust of IAAI & NAA was constituted on 27.02.2009. New PF Rules were formulated by Shri K K Jha on 28.05.2010 in violation of section 42(4) of AAI Act, 1994. EPF Act, does not apply to Airports Authority but **92 crore was paid to EPFO** for obtaining delayed applicability of EPF Act in 2007. Money lost in scam was adjusted from the reserve funds of IAAI & NAA PF Trust. Coverage of EPF Act was challenged before Delhi High Court in W.P (C) 8789/2007. WP (C) 8789/2007 was clubbed with W.P. (C) 4599/1995 on 08.12.09 by High Court on the request of the Counsel of UOI & Airports Authority. Pension issue of CAD absorbees was referred to Department of Pension on 18.05.2010. On 07.10.2010 Ministry of Civil Aviation forwarded reply received from Department of Pension & Pensioners' Welfare to Airports Authority thereby stating that:-

Permanent Govt. employees who were en masse transferred to Airports Authority and had opted for pensionary benefits under Govt. rules, without considering length of service (less or more than 10 years) are eligible for pension under Govt. rules on their retirement on superannuation from Airports Authority.

In similar matter, CAT Principle Branch Delhi also allowed OA 1442/2008 while granting pension to PSU absorbee on 10 years combined service. CAT relied on Division Bench Judgment of Delhi High Court in UOI vs O.P. Sharma [2002 (1) CLR 1088] which was based on a settled case law of pension on PSU absorption [**T S Thiruvengadam vs UOI [(1993 SCR (1) 1978)]**]. Appeal against CAT judgment 21.04.2009 preferred by Secretary Ministry of Power [CWP05/2010 (**UOI Vs Kultar Chand Rana**)] was also dismissed by Delhi High Court on 27.01.10 in following terms: - **Cont...3**

"The Learned Counsel for the petitioner has not disputed that if the past service of the respondent is taken into consideration, his service on attaining superannuation would be more than 10 years.....The petitioners therefore cannot contend that the respondent did not have more than 10 years of service on superannuating.....There are no grounds to interfere with the order of the Central Administrative Tribunal dated 21st April, 2009 in O.A No. 1442/2008 and order 20th November, 2009 in C.P. 373/2009. The Writ petition is without any merit and is therefore dismissed."

Shri K K Jha refused to implement above judgment as well as Department of Pension order on the subject. A delegation of CAD absorbees met INTUC President & M.P (Rajya Sabha) Dr. Sanjeeva Reddy on 21.01.2012 who instantly wrote to Secretary Civil Aviation Dr. SNA Zaidi IAS (Incumbent Election Commissioner) to implement O.M. 30.08.2010 but nothing came out **in fear of reopening scam during GPF audit** and its remittance to Central Govt. (at par with more than 10 years absorbees), till Dr. SNA Zaidi retired on 31.07.2012 and became Election Commissioner of India on 07.08.2012.

Para 4 of O.M. 05.07.89 gives right to retain Govt. pay scale till promotion or retirement whichever is earlier and thereafter PSU scales are to be accepted by absorbee. **Honble Supreme Court** quoted concerned O.M. under para 6 of judgment in Civil Appeal 2388/2008 (**VSNL vs Ajit Kar**) thereby stating that Govt. of India, Ministry of Personnel, Public Grievance & Pensions later on vide **OM No.4/18/87-P&PW (d) dated 07.02.1990** issued clarification in following terms:-

(I) That where the employee had opted to retain pensionary benefits under the Govt. rules, the **emoluments drawn under the PSU** shall be treated as emoluments for the purpose of rule 33 of the CCS (Pension) rules 1972 and accordingly any emoluments drawn by the transferred employee will be taken into account for the purpose of calculation of average emoluments as per clarification given in note 10 below rule 33 of CCS (Pension) rules 1972.

(II) That such employees who have specifically opted for Central Government Pensionary benefits, will be entitled to the benefit of payment of pension on the emoluments drawn at the time of retirement from the PSU. It is not obligatory on the part of the transferred employees who opted for pensionary benefits as admissible under Central Government Rules to retain Govt. pay scales, since both the issues are not related.

Issue involved in writ petition was, **Whether less than 10 years absorbees are eligible to retain Govt. Pension scheme or not?**. Senior Advocate K K Rai & advocate Ms Anjana Gosian representing UOI & Airports Authority, ignored CCS Pension Rules, Supreme Court Judgments enclosed in writ petitions and mischievously deviated from the issue and argued before Delhi High Court on 14.08.2012, that clause 1(a) of OM 05.07.89 was meant for absorption and having exercised option for absorption under clause 1(a) with pay scales of PSU, petitioners can not revert back and claim Govt. pension now. Writ petitions got dismissed on these grounds. Thus Contempt of O.M. 05.07.89, Supreme Court settled law in, **T S Thiruvengadam & Deokinandan Nandan Vs State of Bihar** case, AAI Act & EPF Act was deliberate because Airports Authority is allowing Pension to more than 10 years absorbees from Govt. on PSU pay scales in terms of clause 1(a) of OM. 05.07.89. Appeal against judgment 20.12.2012, is pending before Division Bench (**LPA 291/2013 & LPA294/2013**) but judicial delay is causing immense hardship to those retired and families of deceased. **Cont.....4**

Department of Pension & PW headed by Prime Minister, Ministry of Civil Aviation and Airports Authority, conspired together to defeat writ petitions before Delhi High Court to protect the interest of those involved in multi crore PF scam. Shri K K Jha being Member (P&A) AAI Board is responsible for misinterpretation of clause 1(a) of O.M 05.07.89. Shri K K Jha, prepared grounds for delay & laches so as to refer **M K Sarkar case** during arguments whereas petitioners being in service still earning pensionable service & pay on which pension is to be calculated on retirement. Unlawful pleading before High Court and denial of pension due to PF scam was reported to **Prime Minister Dr. Manmohan Singh** on 16.12.2013 but Ministry headed by Prime Minister just acknowledged the complaint and failed to implement its **Citizen Charter on Pension**. Shri K K Jha who defeated **public interest** involved in O.M 05.07.89 was rather awarded extension beyond 5 year term ended on 15.01.2014. Extended tenure from 16.01.2012 till 30.11.2014 was in violation of section 5(1) of AAI Act, 1994.


Family Pension to nominee of deceased Govt. employee under CCS Family Pension Scheme 1964 is payable on completion of just one year of service and all CAD absorbees completed one year service prior to absorption in NAA on 02.10.89 but Family Pension cases of deceased employees are also not settled till date.

Govt. employees absorbed in MTNL retained GPF cum pension under clause 1(a) of OM 05.07.89 but due to prolonged deputation from 01.04.1986 onwards, pension to MTNL absorbees was allowed from a Trust which was to be constituted by MTNL under Rule 37A of CCS Pension Rules notified on 30.09.2000. On the contrary pension to BSNL absorbees was allowed from Govt. To oppose this discrimination, MTNL Executives' Association filed OA 1063/2004 before CAT Delhi which was dismissed on 30.03.06. Appeal against CAT order preferred before Delhi High Court in WP(C) No.13690-91/2006 was also dismissed on 25.09.2006. After nearly 8 years, Cabinet Committee ignored these judgments and upheld **Fundamental Rights** of MTNL absorbees under article 14, 16, of Constitution of India. After cabinet approval Ministry of Pension headed by Prime Minister issued Gazette Notification on **03.03.2014**, allowing 40000 MTNL absorbees to draw pension from Govt. of India.

Constitution of India is supreme law of land. Pension under CCS Pension Rules 1972 to those absorbed under PSUs in **Public Interest** is state obligation in terms of O.M 05.07.89 which is issued under article 309 of Constitution of India. Denial of prosecution sanction to CBI and further deceiving Airports Authority by 92 crores may be a prudent decision of competent authority but Fundamental Rights of CAD absorbees enshrined under article 14, 16, 21 & right to pension under article 300A of Constitution of India are completely non-negotiable. To enforce these rights, we solicit your kind intervention to raise this issue at all levels and also in next SCOVA meeting so that Pension & Family Pension cases of retired & deceased employees are settled on priority and sanctity of clause 1(a) of O.M. 05.07.89 is restored in its true sense.

Thanking you.

Yours faithfully


(Dr. Arjun Singh)
General Secretary

Encl: Details of CBI FIR, unlawful applicability of EPF Act and Ministry of Civil Aviation Letter 07.10.2010 conveying Department of pension decision.