

RETIRAL BENEFITS AND SETTLED CASE LAW ON PENSION

Central Government employees recruited prior to 01.01.04 are governed by Central Civil Services Pension Rules 1972 as amended time to time. CCS Pension Rules 1972 are regulated by the Department of Pension & Pensioners Welfare under Ministry of Personnel Public Grievances & Pensions. Under GPF cum Pension scheme 12% of Basic pay & Dearness Allowance (DA) is deducted from salary for remitting to GPF account of employees and Pension is paid on retirement from the Consolidated Funds of Govt., which is equivalent to last 10 month average salary plus admissible Dearness Allowance revised twice a year on January 1 and July 1 under Central DA pattern and every quarter on Jan, 1 April, 1 July and October 1 under Industrial DA pattern applicable to Central Govt. employees absorbed in Central Public Sector Undertakings (CPSUs). Contributory Provident Fund scheme (CPF) under CPF Rules 1962 is also in vogue in certain Central Government Departments. Under CPF scheme 12% of (Basic pay plus DA), is also contributed by the employer and thus total 24% is remitted monthly in the CPF account of Employee. Thus Pension is a deferred payment earned as property during service, same as 12% employer share earned monthly under CPF scheme.

Central Govt. employees of Railways & Defence are not governed by CCS Pension Rules as Defence & Railways has their own Pension schemes. Thus an employee can claim Pension on retirement only under a Pension scheme applicable to him at the time of his initial appointment. CPF Beneficiaries are not eligible for pension.

Constitution bench of Supreme Court in Deoki Nandan Prasad vs State of Bihar [1971 Supp. SCR 634] held that Pension is a Fundamental Right under Articles 19(1) (f) and 31 (1) of Constitution and payment of it does not depend upon the discretion of the Govt. but it is governed by the rules and Govt. servant coming within those rules is entitled to claim pension. This view was reaffirmed by Apex Court in State of Punjab v. Iqbal Singh [AIR 1976 SC 667] and in D S Nakara & ors. v. UOI [(1983) 1 SCC 305]. All these judgments are summed up well Hon'ble Court of Delhi in its Judgment dated 09.07.13 pronounced in W.P (C) 4275/2013.

In State of Bengal Vs. Haresh C Banerjee & ors (2006) 7 SCC 651 Supreme court held that even when, after the repeal of Article 19(1) (f) and Article 31(1) of Constitution vide Constitution (Forty Fourth) Amendment Act 1978 w.e.f 26.06.79 the right to property no longer remained a Fundamental Right, it was still a Constitutional right under Article 300A of Constitution. This view was reaffirmed by Supreme Court in Civil Appeal 6770/2013 decided on 14.08.13 [State of Jharkhand & Ors. Vs Jitendra Kumar Srivastava & Anr] under para 14 & 15 as under:-

14. "300A Persons not to be deprived of property save by Authority of Law. No person shall be deprived of his property save by authority of law"

15. It is hardly needs to be emphasized that the executive instructions are not having statutory character and therefore cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above so far as statutory rules are concerned there is no provision for withholding pension or gratuity in the given situation.

Pension on Absorption in PSU/Autonomous Body

Govt. of India created many Central Public Sector undertakings (CPSU) to cater the needs of various sectors of economy & industry. An independent Authority for over all development of domestic airports and modernization of communication, navigation & surveillance equipments used in ATC, enabling smooth growth of Air Traffic in India, was planned in 1986. In pursuance to this vision National Airports Authority (NAA) a CPSU was constituted on 21.05.86 under section 3 of NAA, Act 1985. Nearly 8400 employees of Civil Aviation Department (CAD) working under DGCA were sent on deputation to NAA from 01.06.86 under section 13(3) of NAA Act and absorbed in NAA on 02.10.89 with same terms and conditions of service as prevailing under DGCA.

Ministry of Personnel, Public Grievances & Pensions issued Office Memorandum 05.07.89 conveying settlement of pensionary terms etc. for Central Govt. employees en masse transferred to PSUs/Autonomous Bodies. In case of Civil Aviation Department Employees absorbed in National Airports Authority date of absorption was fixed as 02.10.89 and cutoff date was fixed as 29.09.1989 to exercise various options.

All Central Government Employees absorbed in Public Sector Undertakings/Autonomous Bodies who have not exercised option for CPF scheme of PSU/Autonomous Body at the time of permanent absorption are deemed to have retained GPF cum Pension scheme and such Central Government absorbees are eligible for Pension under CCS Pension Rules 1972 as amended time to time and applicable at the time of their retirement from PSU/Autonomous Bodies. Pension is payable on combined service rendered in Central government & PSU. Issue of OPTION exercised on cutoff date fixed by employer is well settled by Hon'ble Supreme Court in S L Verma case.

Employees Pension Scheme 1995 framed under EPF&MP Act. 1952

Industrial Employees are governed by Employees Pension Scheme 1995, which is the modified scheme of Employees Family Pension Scheme 1971, framed under Employees Provident Fund & Miscellaneous Provision Act, 1952. Schedule of Industries covered under EPF&MP Act, 1952 is published in official gazette by Ministry of Labour Government of India. National Airports Authority, International Airports Authority and Airports Authority of India were exempted from the applicability of EPF&MP Act, 1952 under clause (c) of sub section (1) of Section 16 of the said Act which is reproduced below.

16. Act not to apply to certain establishments - (1) This Act shall not apply –

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(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;