



DAKSHIN HARYANA BIJLI VITRAN NIGAM
REGD OFFICE: VIDYUT SADAN, VIDYUT NAGAR, HISAR
CIN No. U99999HR1999SGC034165

From

Financial Adviser/Hqs
DHBVN, Hisar

To

1. All Chief Engineers in DHBVN.
2. All Superintending Engineers in DHBVN.
3. Chief Auditor/CAO/FA(MM)/FA(CBO), DHBVN, Hisar.
4. All XENs in DHBVN.
5. All Sr. AOs/AOs working as DDOs in DHBVN
6. All Medical Officers in DHBVN
7. All AEE/AEs OP in DHBVN.
8. Chief Communication Officer, DHBVN, Hisar

Memo No. Ch-13/FA/Hqs/F&B-549/Vol-II

Dated: 15/03/2021
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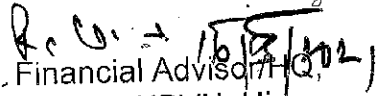
Subject: Adoption of State Govt. (FD) instructions regarding notional annual increment to those Govt. employees who retired either on 30th June after completing one year service or those who retired after completion of 6 months or more but less than one year service proportionate annual increment thereof.

Dakshin Haryana Bijli Vitran Nigam has adopted the State Government Haryana, Finance Department instructions No. 6/183/2018-4 PR (FD) dated 25.11.2020 on the subject cited matter as per copy enclosed herewith.

These instructions should be brought to the notice of all concerned for strict compliance and taking such appropriate measure that are required and same be referred in the replies to the CWPs/Legal Notices/Representations or otherwise.

This issues with the approval of WTDs of DHBVN.

DA/as above


Financial Adviser/HQ,
DHBVN, Hisar.

CC to :-

1. SPS to MD, DHBVN, Hisar for kind information of MD.
2. SPS to Director/Operations for kind information of Director/OP.
3. SPS to Director/Projects for kind information of Director/Project.
4. The Chief Financial Officer, DHBVN, Hisar.
5. The Company Secretary, DHBVN, Hisar.
6. The SE/IT, DHBVN, Hisar for uploading the circular on the Nigam website, pl.



From

Additional Chief Secretary to Government Haryana,
Finance Department.

To

1. All the Administrative Secretaries in Haryana State.
2. All the Head of Departments in Haryana State.
3. All the Divisional Commissioners in Haryana State.
4. All the Deputy Commissioners in Haryana State.
5. All the SDOs (Civil) in Haryana State.

Memo No. 6/183/2018-4PR(FD)
Dated 25.11.2020

Subject:- Grant of one notional annual increment to those Government Employees who retired either on 30th June after completing one year service or those who retired after completion of 6 months or more but less than one year service proportionate annual increment thereof.

Sir/Madam,

I have been directed to refer the subject noted above.

2. State Government had revised the pay scales of its employees as per recommendations of the 6th CPC on the pattern of GOI as per HCS (RP) Rules, 2008 and HCS (ACP) Rules, 2008 vide notification dated 30.12.2008. Wherein, the concept of uniform date of annual increment i.e. 1st July of every year was made applicable w.e.f. 01.01.2006. Regarding annual increment, **Rule 10 of Haryana Civil Services (Revised Pay) Rules, 2008** provides that:-

“There will be a uniform date of annual increment, viz. 1st July of every year. *Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment.* The first increment after fixation of pay on 1.1.2006 in the revised pay structure will be granted on 1.7.2006 for those employees also for whom the date of next increment was between 1st July, 2006 to 1st January, 2007:

Further, **Rule 20 of Haryana Civil Services (ACP) Rules, 2008** provides as under:-

“There will be a uniform date of annual increment, viz. 1st July of every year. Employees completing 6 months and above in the revised ACP pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 01.01.2006 in the revised ACP pay structure will be granted



on 01.07.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1st January, 2007.”

3. Similarly on the recommendations of the 7th CPC, the State Government on the pattern of GOI revised pay scale of its employees w.e.f. 1.1.2016. The relevant corresponding rules for employees, who retired from the Government service after 31.12.2015 are either governed under Haryana Civil Services (Revised Pay) Rules, 2016 or under Haryana Civil Services (ACP) Rules, 2016 at the time of their retirement. **Rule 10 of Haryana Civil Services (Revised Pay) Rules, 2016** provides as under:-

- (1) There shall be two dates for grant of increment namely, 1st January and 1st July of every year, instead of existing date of 1st July:

Provided that an employee shall be entitled to only one annual increment either on 1st January or 1st July depending on the date of his appointment, promotion or grant of financial up gradation.

Provided further that a Government employee who does not complete six months qualifying service before the date of normal increment due on 1st July or 1st January, as the case may be, his date of next increment shall be changed to 1st January or 1st July and shall be granted subject to admissibility.

- (2) The increment in respect of an employee appointed or promoted or granted financial up gradation during the period between the 2nd day of January and 1st day of July (both inclusive) shall be granted on 1st day of January and the increment in respect of an employee appointed or promoted or granted financial up gradation during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on 1st day of July.

Further, **Rule 19 of Haryana Civil Services (ACP) Rules, 2016** provides as under:-

- (1) There shall be two dates for grant of increment namely, 1st January and 1st July of every year, instead of existing date of 1st July:

Provided that an employee shall be entitled to only one annual increment either on 1st January or 1st July depending on the date of grant of ACP up gradation.



Provided further that a Government employee who does not complete six months qualifying service before the date of normal increment due on 1st July or 1st January, as the case may be, his date of next increment shall be changed to 1st January or 1st July and shall be granted subject to admissibility.

(2) The increment in respect of an employee on grant of financial up gradation during the period between the 2nd day of January and 1st day of July (both inclusive) shall be granted on 1st day of January and the increment in respect of an employee on grant of financial up gradation during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on 1st day of July.

(a) In case of an employee granted ACP during the period between the 2nd day of July, 2016 and the 1st day of January, 2017, the first increment shall accrue on the 1st day of July, 2017 and thereafter it shall accrue after one year on annual basis.

(b) In case of an employee granted ACP during the period between 2nd day of January, 2016 and 1st day of July, 2016, who did not draw any increment on 1st day of July, 2016, the next increment, shall accrue on 1st day of January, 2017 and thereafter it shall accrue after one year on annual basis.

4. That there are following two sets of Government Employees/ Petitioners on the basis of their date of retirement:-

a) 1st set of Government Employees/ Petitioners, who had earned their last annual increment on 1st July and got retired after completing one year satisfactory service on 30th June and are claiming the benefit of annual increment which was otherwise due to them had they not retired and remained in service on 1st July.

b) 2nd set of Government Employees/ Petitioners are those who had earned their last annual increment on 1st July and thereafter retired after completing 6 months or more satisfactory service but less than one year service on attaining the age of superannuation i.e. 58/60 years and claiming the benefit of proportionate increment in terms of FD's letter dated 07.01.2015

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5. The 1st set of Government Employees/ Petitioners (as described in sub-para 4(a) above) have filed various writ petitions claiming therein annual increment(s) which otherwise fell due on next day of their retirement i.e. 1st July had they not retired from Govt. service on 30th June. In terms of the rules referred above in para No.2 & 3, such Government Employees/ Petitioners are not entitled for next annual increment even on completion of 12 months of their regular satisfactory service on the day of their retirement. The petitioners are relying upon the judgment dated 15.09.2017 passed by Hon'ble Madras High Court in CWP No. 15732 of 2017-P. Ayyamperumal Vs. Union of India decided on 15.09.2017 which was upheld by the Hon'ble Supreme Court of India in SLP No. 22283 of 2018-Union of India V/s P. Ayyamperumal decided on 23.07.2018.

6. That the Hon'ble Punjab and Haryana High Court had decided a bunch of 18 CWP's on 22.04.2019 and in lead case CWP No. 29465 of 2018 titled as Rajinder Singh Kuhar & Others V/s State of Haryana & Others had observed and directed the State Government as under:-

"Vide the aforesaid letter (dated 28.03.2019), a request has been made to the Central Government to provide at the earliest the information sought and the relevant documents in connection therewith to enable the Government of Haryana to take an appropriate decision in all the pending cases accordingly.

It may be relevant to note that rule 10 of the Haryana Civil Services (Revised Pay) Rules, 2008, is pari materia to the rules framed by the Central Government for its employees in this regard. Shri Balyan further states that as soon as the relevant information is received from the Central Government, an appropriate decision shall be taken by the State of Haryana at the earliest.

In view of the above, learned counsel for the parties have reached a consensus that all these petitions be disposed of with a direction to the State of Haryana to take an appropriate decision with regard to the issue involved in these petitions soon after receiving the requisite information sought from the Central Government."

7. That accordingly, the matter was taken up with Government of India. Now, the requisite information has been received on 08.10.2020, wherein, GOI has intimated as under:-

2. In this matter, with reference to central Government employees, the following is hereby stated:

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- 2.1 In so far as P. Ayyamperumal case is concerned, referred in the instant case also, it is stated that the judgment of Hon'ble High Court of Madras in P. Ayyamperumal case is in personam.
- 2.2 Further, the case of Sh. M Bala Subramaniam referred by Hon'ble High Court in its judgment in P. Ayyamperumal case is related to fundamental Rules of Tamilnadu Government where as P. Ayyamperumal case relates to Central Government Rules.
- 2.3 It is relevant to mention here that in the similar matter, Hon'ble High Court of Andhra Pradesh at Hyderabad in year 2005, in C. Subba rao case, has inter-alia observed as under:

"In support of the above observations, the Division Bench also placed reliance on Banerjee case (Supra), we are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulation) as a periodical rise to a Government employee for the good behaviour in the service. Such increment is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day & payable next day thereafter (See Article 151 of CA Regulations), because he would not answer the test in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to the pensioners.

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Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondalah case (supra).”

2.4 In addition, subsequent to the judgment of Hon'ble High Court of Madras in P. Ayyamperumal case, Hon'ble CAT Madras Bench vide its Orders dated 19.03.2019 in O.A.No.310/ 00309/ 2019 and O.A. No.310/ 00312/ 2019 and order dated 27.03.2019 in O.A. No. 310/ 00026/2019 has also dismissed the similar requests related with notional increment for pensionery benefits.

2.5 The Hon'ble Supreme Court, vide judgment dated 29.03.2019, while dismissing the SLP (C) Dy. No. 6468/2019 filed by D/o- Telecommunications against the judgment dated 03.05.2017 of Hon'ble High Court, Lucknow Bench in WP No. 484/2010 in the matter of UOI & Ore. Vs. Sakha Ram Tripathi & Ors., has inter-alia observed the following.’

‘There is delay of 566 days in filling the special leave petition. We do not see any reasons to condone the delay. The Special Leave Petition is dismissed on delay, Steeping all the questions of law open’

8. The Hon'ble Madras High Court in A.V. Thiyagarajan vs the Secretary to Government (W.P. No. 20732/ 2012 dated 27.11.2012) and Union of India v. R. Sundara Rajan (WP 28433/05) and the Hon'ble Karnataka High Court in Union of India & 3 Others v. YNR Rao (WP18186/ 2003) have held that

“But for the provisions of FR 56, which provides that a Government Servant shall retire from service on the afternoon of last date of the month in which he had attained the age of 58 years, the respondent, who was born on 9.3.1937 would have retired on 8.3.1995. The provision for retirement from service on the afternoon of the last date of the month in which the Government Servant attains the age of retirement instead of on the actual completion of the age of retirement in FR 56 was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to clause (a) of FR 56 which provides that an employee whose date of birth is first of a month, shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 58 years. Therefore, if the date of



birth of a government servant is 1.4.1937 he would retire from service not on 30.4.1995, but on 31.3.1995. If a person born on 1.4.1937 shall retired on 31.3.1995, it would be illogical to say a person born on 9.3.1937 would retire with effect from 1.4.1995. That would be the effect, if the decision of the full bench of the CAT, Mumbai, is to be accepted. Therefore, a Government servant retiring on the afternoon of 31.3.1995 retires on 31.3.1995 and not from 1.4.1995. We hold that the decision of the Full Bench (Mumbai) of the CAT that a government servant retiring on the afternoon of 31st March is to be treated as retiring with effect from the first day of April, that is same as retiring on the forenoon of first of April, is not good law."

9. The Rule 56 (a) of the Fundamental Rules as applicable in the case of the employees of the central government and rule 3.26(a) of the Punjab Civil Service Rule (Volume-I Part-1) as was applicable in the state of Haryana are reproduced as under:

Rule 56(a) of Fundamental Rules: Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years: Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years. Provided further that a Government servant who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years.

Rule 3.26(a) of Punjab Civil Services Rules, (Volume-I Part-1): Except as otherwise provided in other clause of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age fifty-eight years. He must not be retained in service the age of fifty-eight years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of the

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competent authority in public interest, which must be recorded in writing (provided that the age of compulsory retirement for the members of the [judicial Service, blind and] Class-IV Government employee shall be sixty years]. Provided further that a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifth eight or sixty year, as the case may be.

Thus, the Rule 3.26 (a) of the Punjab Civil Services Rules (Volume-I, Part-I) as applicable to the State of Haryana is pari materia to the FR 56(a) of the Central Government.

10. The 2nd set of Government Employees/ Petitioners (as described in sub-para 4(b) above) have also filed various writ petitions claiming therein annual increment(s) on proportionate basis. However, annual increment on proportionate basis is only applicable in case where an employee joined as fresh entrant between 1st January and 1st July on the ground that otherwise they get their 1st increment after more than 12 months upto 18 months service

11. That for 2nd set of employees (as described in sub-para 4(b) above) neither Rule 10 of HCS (RP) Rules, 2008 nor Rule 20 of HCS (ACP) Rules, 2008 provides the benefit of proportionate increment. It is made clear that vide FD's letter dated 07.01.2015, the benefit of proportionate increment was made admissible in relaxation of stipulation under Rule 10 of HCS (RP) Rules, 2008 and Rule 20 of HCS(ACP) Rules, 2008 with respect to those employees only who joined service as fresh entrant between 1st January & 1st July. Therefore, the benefit of proportionate increment to such Government Employees/ Petitioners is not admissible.

12. Keeping in view the aforesaid information provided by the GOI and the fact that the rules on the issue of grant of annual increments as applicable in the case of the Central Govt. employee are still intact and have not been quashed by any orders of the Hon'ble Courts including orders passed by the Hon'ble Madras High Court in P. Ayyamperumal case, the GOI has not generalized the orders passed in P. Ayyamperumal case of the Hon'ble Madras High Court. Thus, the Finance Department observes that the claim of annual increment to the Government Employees/ Petitioners who are not in service on 1st July due to retirement/superannuation, is not tenable.

13 That a number of cases on the same lines have been disposed of by the Hon'ble Punjab & Haryana High Court directing the respondents to



decide the claim of the petitioners as raised in the CWPs/ Legal Notices/ Representations or otherwise, keeping in view the judgment of Hon'ble Madras High Court passed in P. Ayyamperumal case. Therefore, it is hereby advised to examine similar situated CWPs/ Legal Notices/ Representations etc. on the above said lines in consultation with Officers of Attorney's cadre and SAS Cadre posted in the Department and pass necessary Speaking Orders/file replies to CWPs and take further necessary action after meticulously verifying the facts/ personal details from the office record.

14. A copy of the communication received from Government of India in this regard is enclosed for ready reference.

Udhan
Chief Accounts Officer (PR)
for Additional Chief Secretary to Government Haryana
Finance Department

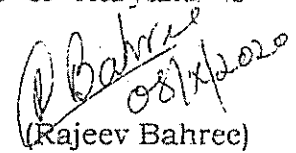
person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated Fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (See Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondalah case (supra)."

2.4 In addition, subsequent to the judgment of Hon'ble High Court of Madras in P. Ayyamperumal case, Hon'ble CAT Madras Bench vide its Orders dated 19.03.2019 in O.A.No.310/00309/2019 and O.A. No.310/00312/2019 and Order dated 27.03.2019 in O.A. No.310/00026/2019 has also dismissed the similar requests related with notional increment for pensionary benefits.

2.5 The Hon'ble Supreme Court, vide judgment dated 29.03.2019, while dismissing the SLP (C) Dy. No.6468/2019 filed by D/o- Telecommunications against the judgment dated 03.05.2017 of Hon'ble High Court, Lucknow Bench in WP No.484/2010 in the matter of UOI & Ors. Vs. Sakha Ram Tripathy & Ors., has *inter-alia* observed the following:

*"There is delay of 566 days in filing the special leave petition. We do not see any reason to condone the delay. The Special leave petition is dismissed on delay, **keeping all the questions of law open.**"*

3. In the light of above observations, The Government of Haryana is requested to take further appropriate action.


(Rajeev Bahrec)

Under Secretary to the Government of India
Tel. No.23040489

Government of Haryana
(Sh. T.V.S.N. Prasad, IAS, Additional Chief Secretary (Finance & Planning))
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