

F. No. I 6/1/58/2008-IR
Gov of India
Ministry of Finance
Department of Financial Services

Jeevan Deep, III Floor
Parliament Street, New Delhi-1 10001.
Dated 23.10.2009

To

1. Shri Arvind Ganesh Karnik
205 Gaganagiri Towers
Santramdas Marg, Mulund (E)
Mumbai-400081.

2. Shri Anil Pandnirinath Kale
Satkan Building, Fiat No. A
Nath Pai Nagar, Ghatkopar (E)
Mumbai-400077

3, Shri Laxman Vasudeo Kulkarni
1/3 Madhuwanti Society
Near Karve Statue
Kothrud, Pune-4 11 038.

Sub: Writ Petition No. 710 of 2009 filed by Shri Arvind Ganesh Karnik Vs. Reserve Bank of India and Union of India & Others — Speaking Order thereof.

Sir,

I am directed to say that on the Writ Petition No. 710 of 2009 by Shri Arvind Ganesh Karnik & Others Vs. Reserve Bank of India & Union of India & others, Div Bench of the High Court, Bombay passed an order dated 27.4.2009, inter—alia, directing therein that within a period of four weeks from that date, the petitioners shall make representation to the Government of India with a copy to Reserve Bank of India (RBI) pointing out to them that they are making representation against the directions issued by the Government of India to the Reserve Bank of India. The petitioners are entitled to point out that the Government of India does not have powers to issue such directions under Section 7 of the Act. The Government of India after receiving representation shall grant an opportunity of being heard to the petitioners and then dispose of the representation by a speaking order. The order shall be communicated to the petitioners and the Reserve Bank of India. In case, the order goes against the petitioners, the Reserve Bank of India shall not reduce the pension of the petitioners for a period of eight weeks from the date on which the order is communicated to the Petitioners.

2. In compliance with the directions of the Division Bench of the High Court Bombay, the petitioners were requested to make a representation to the Central Government for consideration of the same and to dispose it by a speaking order, after giving an opportunity to hear them vide letter dated 22.05.2009. (Annex-I)

3. In pursuance thereof, a representation from All India Reserve Bank of India Employees Association, Mumbai dated 19.05.2009 was received on 26.05.2009 (referred to as "Representation" hereinafter) Further, as directed by the Hon'ble High Court, it was requested vide letter dated 17.06.2009 (Annex-II) to make it convenient to attend the personal hearing on 29.06.2009. The hearing was attended by the representatives of All India Reserve Bank of India Retired Employees Association along with their Advocate on the scheduled date. During the course of the hearing, it was also requested by All India Reserve Bank of India Retired Employees Association that the Government may also hold a meeting with RBI for deliberations before passing an order to this effect. A meeting was accordingly held with the officers of RBI on 14.07.2009. The issues were deliberated at length with the officers of RBI in the meeting.

4. The points raised in the representation have been examined carefully. Viewing the matter in its entirety, the position of the Government of India is elucidated on each para of the Representation dated 19.05.2009 as indicated below. The contents of this letter may be taken as the Speaking Order' passed by Ln2 Government of India on the representation.

4.1 Reply to Para-1:

The Central Government has not given any directions to the RBI under Section 7 (1) of the RBI Act, 1934. The Central Government has only pointed out that Regulation 28 of the RBI Pension Regulations, 1990, clearly lays down that the rate of basic pension will be fifty per cent of the average emoluments subject to a minimum of Rs 720/- per mensem. The average emoluments have been defined in Regulation 2 (2) of the RBI. Pension Regulations, 1990 which states that "average emoluments means " average of pay drawn by an employee during the last 10 months of his service". Thus the Circular of RBI dated 1.9.2003 contravenes the provisions of the RBI Pension Regulations, 1990.

4.2 Reply to Para 2

As has been stated in reply to Para 1, the Central Government has not given any direction in the instant case under Section 7 (1) of the RBI Act, 1934. The Government has only pointed out that it contravenes the provisions of Regulation 2 (2) of the RBI Pension Regulations, 1990.

4.3 **Reply to Para 3**

It has been amply clarified that the Central Government has not issued any directions under Section 7(1) of the RBI Act, 1934 and , therefore, the question of invoking it does not arise.

4.4 **Reply to Para 4:**

Emoluments for the purpose of pension have been unambiguously defined in Regulation 2 (2), which states average emoluments means average of pay drawn during the last 10 months of his service. It hardly leaves any point of doubt that the pension is to be determined on the basis of the emoluments drawn and not on the notional pay.

As regards the contention that the RBI can issue administrative orders to cover 'notional pay', it is stated that the Administrative Orders cannot override the Statutory Regulations and such Administrative Orders which violate provisions of the Statutory Regulations are unsustainable. The Administrative Orders or instructions cannot become a tool to circumvent the provisions of the Statutory Regulations. Further, the most harmonious interpretation of Regulation 2 (a) to (f) does not lead to cover the 'Notional Pay' as pay drawn.

4.5 **Reply to Para 5:**

RB Pension Regulations, 1990 have been framed under Clause (j) of sub section (2) of Section 58 of RBI Act, 1934 by the Central Board of RBI with the previous sanction of the Central Government. The Board of the bank thus can exercise only such powers which have been specifically vested/ authorized in the Pension Regulations. The Board is not entitled to assume, usurp and exercise such powers, which are not vested with it.

4.6 **Reply to Para 6:**

RBI Staff Regulations, 1948 are administrative instructions and these cannot override the statutory regulations. Irrespective of this, the pay as defined in clause 3 (f) of the RBI Staff Regulations, 1948 states 'pay' means the amount drawn by an employee and does not cover within its ambit "Notional Pay".

4.7 **Reply to Para 7:**

As per RBI Pension Regulations, 1990, pension is to be calculated on the basis of the average of last 10 months pay drawn and not on the basis of the notional pay. Further, there is no provision in the RBI Pension Regulations, 1990 to update pension.

4.8 Reply to Para 8:

Regulation 5 relates to the application of regulations and does not envisage mutatis mutandis applicability of CCS Pension Rules, 1972. A plain reading of the Regulation 5 clearly brings out that it relates to the application of the regulation in so far as these can be adapted to the service in the bank, but subject to such exceptions and modification as the bank may from time to time determine. It does not envisage covertly or overtly to contravene the provisions of the regulations

4.9 Reply to Para 9:

The pension of the Central Government employees is determined in terms of the CCS (Pension) Rules, 1972 and the orders issued from time to time. The terms and conditions of service of the Central Government employees are entirely different from that of the RBI and the orders issued in the case of Central Government employees are not mutatis mutandis applicable to the RBI employees. If this had been so, the New Pension Scheme substituting the 'defined contribution scheme' to replace 'defined benefit scheme' introduced in the Central Government w. e. f. 01.01.2004 would have also been made applicable in RBI. Since RBI has not introduced the New Pension Scheme till date, it goes against the grain of the contention that any change in the pension scheme of Central Government is equally applicable to pension scheme of RBI. The terms and conditions of employees of RBI which is a statutory body cannot be equated with the employees of the Central Government in respect of pension because pension of the RBI employees is governed by the Regulations framed under RBI Act, 1934. RBI Pension Regulations, 1990 have been framed under clause (j) of sub section (2) of Section 58 of the RBI Act, 1934 by the Central Board of the Reserve Bank of India with the previous sanction of the Central Government.

4.10 Reply to Para 10:

There is no paragraph with number 11 (iv) in the affidavit filed on behalf of UOI. Paragraph 12 (iv) states that in the case of Central Government employees, the definition of average emoluments has been changed for the purpose of updation of pension by the order. However, in the case of RBI, no such orders have been issued to change the definition of the pay as this needs amendment in the Regulations to be approved by the Board of Directors of RBI with the previous sanction of the Government. It is also pertinent to mention that the case of D.S. Nakara Vs UOI is not applicable to the bank employees.

4.11 Reply to Para 11:

The retrial benefits of the RBI Employees are regulated in terms of the RBJ Pension Regulations, 1990. No inspiration or parallel can be drawn on the terms and conditions of the service of an entirely different set of employee: RBI Employees are having an edge over the Central Government employees on the entitlement of the gratuity, pay structure, revision of salary after 5 years. This would lead to an anarchical situation, if each service is allowed cherry picking the best of other services. The question of formal amendment, in the Central Government Pension Rules is not very relevant as the Central Government has issued the necessary Notification, in this regard.

4.12 Reply to Para 12:

It is true that the pension scheme in the banks including RBI has been modeled on the pension scheme in the Central Government. It is evident that the scheme has been modeled and not the same as that of the Central Government employees. The model of the scheme on the pattern of another scheme does not construe that as and when some amendments are carried out in the scheme modeled similar amendments need to be carried out on the scheme modeled there from.

4.13 Reply to Para 13:

It needs no comment, as the pensioners are also granted Dearness relief on the pension based on the consumer price index.

4.14 Reply to Para 14:

The pension on the basis of notional pay was introduced in the Central Government in 1996 and prior to that there were no such phenomena of determination of pension on the basis of notional pay. The updation of pension mentioned in the RBI Circular dated 13.03.1992 is out of context as the concept of updation of pension in the Central Government was not even conceived then as it was introduced after the pay revision from 01.01.1996.

4.15 Reply to Para 15:

A plain reading of the paragraph of 5th CPC recommendations leaves without an iota of doubt that these recommendations are not applicable to RBI / autonomous bodies. It has been, inter-alia, stated therein that 'it would not be appropriate for us to put fetters on the, discretion and authority of State Governments or autonomous organizations to determine the condition of service and quantum of salary benefits to their employees".

4.16 Reply to Pan 16:

The case referred in the petition was on the issue of arbitrary cut off date of 01.01.1986 for the grant of option for pension. The Supreme Court decided the case against the petitioner s. The observations in the case cannot be selectively quoted as the observations are made with reference to a particular context. The Court had also, inter-alia, observed therein that “This court in paragraph 34 of the judgement repealed the contention based on Article 14 read with issue in D.S. Nakara Case as fallacious in view of the fact that while in the case of pension of retirees who are alive, the Government had the continuing obligation, while in the case of PF retirees each one’s right is final”.

4.17 Reply to Para 17:

It is a matter of fact that the pay structure of RBI is not comparable with that of Central Government employees for the reasons that pay scales of the employees of RBI are revised after every 5 years, while pay scales of the Central Government employees are revised after 10 years and also manner of pay fixation is different, as no fitment of stage to stage fixation in the new pay scales is allowed in the Central Government. Besides this, there are no perquisites in the Central Government employees, while RBI employees are entitled to a host of perquisites. This is precisely the reason that two services are not comparable and both these services are regulated in terms of their respective terms and conditions of service. Further the pensioners are granted Dearness relief on pension to compensate the increase in cost of prices of essential commodities,

4.18 Reply to Para 18:

In the case of retirees from 01.01.1986 to 31.10.1987, it was not notional fixation of pay but the merger of D.A. in the pay scales to save them from a disadvantageous position. The pay revision of the RBI employee is after 5 years and their pay revision prior to the revision in 1987 was effected in 1982.

4.19 Reply to Para 19:

As has already been stated that the retirees of pre 1.1.1986 to 31.10.1987 would have been at a disadvantageous position as their pension would have been determined on the basis of their pay scales of 1982. In that case also, the D.A. was allowed to be merged for the determination of pension.

4.20 Reply to Para 20:

The core issue is whether as per the extant RBI Pension Regulations, 1990, the pension is required to be determined on the basis of the average of the last 10 months pay drawn or on the pay notionally

arrived. On this issue, Regulation 2 (2) of the RBI Pension Regulations, 1990 defines unambiguously and without an iota of doubt that average emoluments for the purpose of pension is average of 10 months pay drawn. Similar provisions exist in the Pension Regulations, 1995 of PSBs.

4.21 Reply to Para 21:

In the case of Central Government retirees, the Government had accorded approval for the fixation of the pay of the retirees on notional basis and thereafter re-fixation of pension on the basis of notional pay. In the case of RBI retirees, Government has not accorded approval for the determination of pension on the basis of notional pay. The extant regulations of RBI Pension Regulations, 1990 provide for the determination of pension on the basis of average of last 10 months pay drawn.

4.22 Reply to Para 22:

The information furnished by RBI clearly indicates that the bank has made the additional contribution in the pension fund over and above 10% of the basic pay. The information furnished as under from 2001 onwards indicate the additional contribution made by the Bank over and above normal contribution of 10%:

(Rs in crores)

Year	Bank's contribution of basic pay @yearly 10%	Additional contributions
7.1.2001	45.43	201.00
7.1.2002	50	303.25
7.1.2003	35.05	484.85
7.1.2004	30.95	841.46
7.1.2005	26.68	151.35
7.1.2006	75.38	371.33
7.1.2007	44.04	303.44
7.1.2008	45.45	112.69
7.1.2009	40.70	622.53

It would be seen there from that RBI has made excessive contribution over and above normal contribution of 10%. This has resulted in bloating of the fund which should not be used to shower undue benefit to anyone, including the Retirees.

4.23 Reply to Para 23:

The Retirees of RBI are much better placed than the retirees of the other PSBs on account of the fact that the pay structure of the RBI is much better than the pay structure of the other PSBs which in turn entitle them to higher retiral benefits like gratuity, leave encashment and pension. The Central Government being alive to the hardship that will be caused to the retirees on the recovery of the excess payment made to them since 2002, has waived it. This, however, does not entitle them to receive the undue payment, indefinitely.

4.24 Reply to Para 24:

The Circular dated 0 1.09.2003 contravenes the provisions of the RBI Pension Regulations, 1990 and in order to restore the sanctity of the rules, it was required to be withdrawn. The delay in withdrawing the circular is, however, a matter of concern.

4.25 Reply to Para 25:

The hearing was given along with their advocate on 29.06.2009.

5. In addition to the position stated above, following points were also given due consideration:

5.1. Ministry of Law was consulted on this issue has opined that (a) The employees of RBI, which is a statutory body cannot be equated with the employee of the Central Government, in respect of pension, because pension of the RBI employees is governed by the Regulations framed under the RBI Act.

(b) As the pension regulations are framed in exercise of statutory powers under the RBI Act these are the statutory regulations. Any deviation / amendment of the provisions of these pension regulations without formally amending it after following the procedure prescribed by the RBI Act will not be permissible under the law. No deviation / amendment of pension regulations can be made by administrative orders / instructions.

5.2. Indian Banks' Association was consulted in the matter in 2004. It also did not view the proposal, favourably and has stated as follows:

- (a) The proposal if implemented would strengthen the demand made by Officers association /workmen unions in the public sector banks as well as various banks / retirees association for updation of pension on the lines of updation formally adopted by RBI.
- (b) There is already a demand from officers' association / workmen unions that any improvement in the pension scheme made by RBT would be automatically extended to the employees / retirees of Public Sector Banks (P SB s).
- (c) The PSBs are not in a position to agree to any such demand because the pension is being payable on the pay last drawn by the pensioners at the time of retirement.
- (d) There is no provision in the pension regulations of PSBs for updation of pension of past retirees.
- (e) Updation of pension may result in an increase between 17% to 32% depending upon the date on which the employee had retired.
- (f) Updation of pension may involve approximately an amount of Rs 1042 crores for the PSBs excluding State Bank of India.

5.3. The meaning of definition of Average Emolument from the pay drawn by an employee during the last 10 months to 'Notional Pay arrived' is not a correct interpretation.

5.4. Any administrative order or instructions which circumvent the provisions of the Regulations is, unsustainable. Further, the Regulations have the precedence over the Administrative Orders/ Instructions.

5.5. It will have wide ramifications and repercussions in the Financial Sector.

6.1 In the light of the facts and other relevant points as brought out above, the representation cannot be accepted. This letter disposes of the representation filed by the petitioners in Writ Petition No. 710/2009 in pursuance of Order dated 27.04.2009 by Bombay High Court and may also be taken as the 'Speaking Order' to be issued by the Government of India as per the Hon'ble High Court's Order dated 27.04.2009. A copy of this letter is also marked to Reserve Bank of India as directed by the Hon'ble Court.

Yours faithfully,

----sd----

(Samir Sinha)

Director

Copy to Sink V.P. Arya, General Manager, Human Resources Development Department, Reserve Bank of India, 20th Floor, Central Office Building, Shahid Bhagat Singh Road, Mumbai —400 001.