



Western Railway Employees' Union

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J. R. Bhosale

General Secretary

No.PRTN WS/18/2023

Date:03-10-2023

To,
GM(E)-CCG

Sub: Consideration of Pension & Gratuity in the event of invalidation from service on disability in case of Kirit K Rathodiya, Technician Gr. III (Fitter), T.No.2060, ICF Shop under CWM-PRTN.

Ref: Our earlier letter of even no. dated 17-08-2023 and GM PNM Item No.68/2023.

In continuation of our letter dated 17-08-2023 cited above and in reference to GM PNM Item No.68/2023 it is to inform you that the Department of Pension and Pensioners Welfare, New Delhi vide its Office Memorandum No. 21/01/2016-P&PW(F) dated 12-02-2019 (copy enclosed) has clarified that the condition of qualifying service of 10 years for grant of Pension under Rule 49(2) of the CCS (Pension) Rules 1972 shall not be applicable in the case of a government servant retiring on invalid pension on account of any bodily or mental infirmity/illness under Rule 38. Accordingly, invalid pension @ 50% of emoluments or average emolument whichever is more beneficial to the employee subject to a minimum of Rs. 9000/- shall be payable to such employee who retires due to medical invalidation/unfitness before completing qualifying service of 10 years.

You are therefore requested to reply CWM-PRTN who sought clarification vide his letter No. E/1054/General dated 16-08-2023 and advice CWM-PRTN to grant invalid pension to Shri Kirit K. Rathodiya as soon as possible to mitigate the hardship faced by the employee and his family without any source of livelihood due to his medical invalidation since 02-03-2023.

Encl: as above


General Secretary

38. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body.-

(1) On conversion of a department of the Central Government into an autonomous body, all Government servants of that Department shall be transferred en-masse to that autonomous body on deemed deputation on terms of foreign service without any deputation allowance till such time as they get absorbed in the said body and such transferred Government servants shall be absorbed in the autonomous body with effect from such date as may be notified by the Government.

(2) The autonomous body shall frame its rules and regulations within a time frame not exceeding five years. After such rules and regulations are framed by the autonomous body, all employees on deemed deputation shall be asked, within a period not exceeding three months from the date of notification of the rules and regulations by the autonomous body, to exercise their option to revert back to the Government or to seek permanent absorption in the autonomous body. Such employees shall be asked to exercise this option within a period of three months from the date of the communication asking the employees to exercise the option.

(3) The option referred to in sub-rule (2) shall be exercised by every transferred Government servant in such manner as may be specified by the Government and an employee, who does not exercise any option within the prescribed time limit, shall be deemed to have opted for permanent absorption in the autonomous body.

(4) The permanent absorption of the Government servants as employees of the autonomous body shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.

(5) In case of absorption of Government servants in the autonomous body, the posts which they were holding in the Government before such absorption shall stand abolished.

(6) The employees who opt to revert to Government service shall be repatriated to the Government within two years from the date of exercise of the option and shall be redeployed through the surplus cell of the Government.

(7) The period between the date of option and the date of reversion to the Government shall continue to be on deemed deputation on terms of foreign service without any deputation allowance.

(8) Where an employee retires or dies during the period of such deemed deputation, the pay which he would have drawn under the Central Government had he not been on deemed deputation shall be treated as emoluments for calculating the pensionary benefits to be paid by the Government.

(9) The pensionary benefits in respect of such employee shall be drawn and paid in the manner to be specified by the administrative Ministry of the autonomous body.

(10) Subject to the provisions of sub-rule (11) to sub-rule (15), the employees including temporary employees but excluding casual labourers, who opt for permanent absorption in the autonomous body shall, on and from the date of absorption, be governed by the rules and regulations or bye-laws of the autonomous body.

(11) A Government servant who has been absorbed as an employee of the autonomous body shall be entitled to exercise option either,-

(a) to receive pension or service gratuity and retirement gratuity, as the case may be, for the service rendered under the Central Government in accordance with rule 44 and rule 45 of these rules; or

(b) to count the service rendered under the Central Government in that body for pension and gratuity.

(12) In the case of a Government servant who has exercised option under clause (a) of sub-rule (11), the pay which he would have drawn under the Central Government had he not been on deemed deputation shall be treated as emoluments for calculating the pensionary benefits to be paid by the Government.

(13) The pensionary benefits in respect of such employee shall be drawn and paid in the manner to be specified by the administrative Ministry of the autonomous body.

(14) A Government servant who has exercised option under clause (b) of sub-rule (11) and his family shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extra-ordinary pension), on the basis of combined service rendered by the employee in the Government and in the autonomous body in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the autonomous body or his death.

Explanation.- The amount of pension or family pension in respect of the absorbed employee on retirement from the autonomous body or on death shall be calculated in the same manner as calculated in the case of a Central Government servant retiring or dying, on the same day. The pensionary benefits in respect of such employee shall be drawn and paid in the manner specified in sub-rule (16) to sub-rule (27).

(15) In addition to pension or family pension, as the case may be, the absorbed employees who opt for pension on the basis of combined service shall also be eligible to dearness relief as per central dearness allowance pattern.

- (16) The Central Government shall create a Pension Fund in the form of a trust and the pensionary benefits of absorbed employees shall be paid out of such Pension Fund.
- (17) The Secretary of the administrative Ministry of the autonomous body shall be the Chairperson of the Board of Trustees which shall include representatives of the Department of Expenditure, Department of Pension and Pensioners' Welfare, Ministry of Labour and Employment, concerned autonomous body, employees of the concerned autonomous body and experts in the relevant field to be nominated by the Central Government.
- (18) The procedure and the manner in which pensionary benefits to the employees, who have exercised option under clause (b) of sub-rule (11), are to be sanctioned and disbursed from the Pension Fund shall be determined by the Government on the recommendation of the Board of Trustees.
- (19) The Government shall discharge its pensionary liability in respect of employees, who have exercised option under clause (b) of sub-rule (11), by paying in lump sum as a one time payment to the Pension Fund.
- (20) The pensionary liability shall comprise the capitalised value of pension or service gratuity and retirement gratuity for the service rendered till the date of absorption of the Government servant in the autonomous body.
- (21) Lump sum amount of the pension shall be determined with reference to Commutation Table laid down in Central Civil Services (Commutation of Pension) Rules, 1981
- (22) The manner of sharing the financial liability on account of payment of pensionary benefits to the employees, who have exercised option under clause (a) of sub-rule (11), by the autonomous body shall be determined by the Government.
- (23) In respect of the employees who have exercised option under clause (b) of sub-rule (11), the autonomous body shall make pensionary contribution to the Pension Fund for the period of service to be rendered by the concerned employees under that body at the rates as may be determined by the Board of Trustees so that the Pension Fund shall be self-supporting.
- (24) If, for any financial or operational reason, the Trust is unable to discharge its liabilities fully from the Pension Fund and the autonomous body is also not in a position to meet the shortfall, the Government, through the administrative Ministry for the autonomous body, shall be liable to meet such expenditure and such expenditure shall be debited to either the Fund or to the autonomous body, as the case may be.
- (25) Payments of pensionary benefits of the pensioners of a Government Department who retired from that Department before the date of its conversion into an autonomous body shall continue to be the responsibility of the Government and the mechanism for sharing its liabilities on this account shall be determined by the Government.
- (26) In case of conversion of a Government Department into an autonomous body,-
- (a) the balance of provident fund standing at the credit of the absorbed employees on the date of their absorption in the autonomous body shall, with the consent of such body, be transferred to the new Provident Fund Account of the employees in such body;
- (b) earned leave and half pay leave at the credit of the employees on the date of absorption shall stand transferred to such body;
- (c) the dismissal or removal from service of the autonomous body of any employee after his absorption in such body for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in the event of his dismissal or removal or retrenchment the decisions of the body shall be subject to review by the Ministry administratively concerned with the body.
- (27) In case the Government disinvests its equity in any autonomous body to the extent of fifty-one per cent or more, it shall specify adequate safeguards for protecting the interest of the absorbed employees of such autonomous body.
- (28) The safeguards specified under sub-rule (27) shall include option for voluntary retirement or continued service in the body, as the case may be, or voluntary retirement benefits on terms applicable to Government employees or employees of the autonomous body as per option of the employees, assured payment of earned pensionary benefits with relaxation in period of qualifying service, as may be decided by the Government.
- (29) Nothing contained in this rule shall be applicable to the officers or employees including members of Indian Information Service, Central Secretariat Service or any other service or to the persons borne on cadres outside Akashvani and Doordarshan, serving in the Akashvani and Doordarshan and engaged in the performance of functions transferred to Prasar Bharati established under Prasar Bharati (Broadcasting Corporation of India) Act, 1990.
- 39. Invalid pension.- (1)** The case of a Government servant acquiring a disability, where the provisions of section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are applicable, shall be governed by the provisions of the said section:

Provided that such employee shall produce a disability certificate from the competent authority as prescribed under the Rights of Persons with Disabilities Rules, 2017.

(2) If a Government servant, in a case where the provisions of section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are not applicable, intends to retire from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service, he may apply to the Head of Department for retirement on Invalid Pension:

Provided that an application for invalid pension submitted by the spouse of the Government servant failing which by a member of the family of the Government servant may also be accepted, if the Head of Department is satisfied that the Government servant himself is not in a position to submit such application on account of the bodily or mental infirmity:

Provided further that where a Government servant, who has acquired a disability and in whose case the provisions of section 20 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) are applicable, intends to retire under this rule, the Government servant shall be advised that he has the option of continuing in service with the same pay scale and service benefits which he is otherwise entitled to and in case the Government servant does not withdraw his request for retirement under this rule, his request may be processed in accordance with the provisions of this rule.

(3) On receipt of an application under sub-rule (2), the Head of Office or Head of Department shall, within fifteen days of the receipt of such application, request the concerned authority for examination of the Government servant, not later than thirty days from the date of receipt of such request by the following medical authority, namely:-

(a) a Medical Board in the case of a Gazetted Government servant and of a non-Gazetted Government servant whose pay, as defined in rule 9 (21) of the Fundamental Rules, 1922 exceeds fifty- four thousand rupees per month; and

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.

(4) The medical authority shall also be supplied by the Head of the Office or Head of Department in which the applicant is employed with a statement of what appears from official records to be the age of the applicant, and if a service book is being maintained for the applicant, the age recorded therein should be reported and a copy of the letter requesting for examination by the medical authority shall be endorsed to the Government servant.

(5) The Government servant shall appear before the concerned medical authority for medical examination on the date fixed by that authority and the medical authority shall examine the Government servant to ascertain whether or not the Government servant is fit for further service or whether he is fit for further service of less laborious character than that which he had been doing.

(6) No medical certificate of incapacity for service may be granted unless the medical authority has received a request from the Head of his Office or Head of Department for medical examination of the Government servant.

(7) A lady doctor shall be included as a member of the Medical Board when a woman candidate is to be examined.

(8) Where the medical authority referred to in sub-rule (3) has found a Government servant mentioned in sub-rule (2) not fit for further service or has found him fit for further service of less laborious character than that which he had been doing, it shall issue a Medical Certificate in Format 6 and if the Government servant is found to be unfit for further service, he may be granted invalid pension in accordance with rule 44 not later than forty five days from the date of the receipt of medical certificate in Format 6.

(9) A Government servant, who retires from service even before completing qualifying service of ten years, shall also be granted invalid pension and, in his case, the amount of pension shall also be calculated at fifty percent of emoluments or average emoluments, whichever is more beneficial to him in accordance with rule 44:

Provided that in such cases the Government servant-

(a) *has been examined by the appropriate medical authority either before his appointment or after his appointment to the Government service and declared fit by such medical authority for Government service; and*

(b) *fulfils all other conditions mentioned in this rule for grant of invalid pension.*

(10) In case, the Government servant has been found to be fit for further service of less laborious character than that which he had been doing, he shall, if, he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

40. Compulsory retirement pension .- (1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or retirement gratuity or both at a rate not less than two-thirds and not more than full superannuation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(5) Where gratuity is granted under rule 45 to a minor member of the family of the deceased Government servant, it shall be payable to the guardian on behalf of the minor.

(6) Payment of the minor's share of gratuity shall be made to the natural guardian of the minor, if any. In the absence of a natural guardian, the payment of minor's share of gratuity shall be made to the person who furnishes a certificate of guardianship.

(7) In the absence of a natural guardian, payment of an amount not exceeding twenty percent of minor's share of gratuity may be made to the guardian without the production of a guardianship certificate but on production of an indemnity bond in Format 7 and the balance amount of minor's share of gratuity may be paid to the guardian on production of the certificate of guardianship.

(8) If there are more than one member of the family eligible to receive gratuity under this rule and if a member of the family has not submitted his claim for gratuity in Form 9, the case for sanction of gratuity to him may be processed after his claim has been received and the case of other eligible members of the family for sanction of gratuity may be processed without linking it with the case of the family member who has not submitted the claim in Form 9.

48. Debarring a person from receiving gratuity.- (1) If a person who in the event of death of a Government servant while in service is eligible to receive gratuity in terms of rule 47, is charged with the offence of murdering the Government servant or for abetting in the commission of such an offence, his claim to receive his share of gratuity shall remain suspended till the conclusion of the criminal proceedings instituted against him.

(2) If on the conclusion of the criminal proceedings referred to in sub-rule (1), the person concerned,-

(a) is convicted for the murder or abetting in the murder of the Government servant, he shall be debarred from receiving his share of gratuity which shall be payable to other eligible members of the family, if any,

(b) is acquitted of the charge of murdering or abetting in the murder of the Government servant, his share of gratuity shall be payable to him.

(3) The provisions of sub-rule (1) and sub-rule (2) shall also apply to the undisbursed gratuity referred to in sub-rule (3) of rule 47.

Explanation.- For the purpose of this rule, the charge of murder or abetting in the murder of Government servant will include the charge of abetting death by suicide.

49 Lapse of retirement gratuity and death gratuity.- Where a Government servant dies while in service or after retirement without receiving the amount of gratuity and leaves behind no family and -

(a) has made no nomination, or

(b) the nomination made by him does not subsist,

the amount of retirement gratuity or death gratuity payable in respect of such Government servant under rule 45 shall lapse to the Government:

Provided that the amount of death gratuity or retirement gratuity shall be payable to the person in whose favour a Succession Certificate in respect of the gratuity in question has been granted by a Court of Law.

CHAPTER VIII

Family Pension

50. Family Pension.- (1) Where a Government servant dies,-

(i) after completion of one year of continuous service; or

(ii) before completion of one year of continuous service, provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government service; or

(iii) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in these rules,

the family of the deceased shall be entitled to a family pension from the date following the date of death of the Government servant or the retired Government servant, as the case may be.

Explanation - 'Continuous service' means service rendered in a temporary or permanent capacity in a pensionable establishment and does not include period of suspension, if any and period of service, if any, rendered before attaining the age of eighteen years.

(2)(a)(i) Subject to sub-clause (ii) and sub-clause (iii), the amount of family pension shall be determined at a uniform rate of thirty per cent of pay subject to a minimum of nine thousand rupees per month and a maximum of seventy-five thousand rupees per month.

No. 21/01/2016-P&PW(F)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Pension & Pensioners' Welfare)

New Delhi, the 12th February, 2019

OFFICE MEMORANDUM

Sub :- Grant of Invalid Pension under Rule 38 of the Central Civil Services (Pension) Rules, 1972 – Clarification regarding


The undersigned is directed to say that Rule 38 and Rule 49 of the Central Civil Services (Pension) Rules, 1972 have been amended vide Notification No. 21/1/2016-P&PW(F) dated 4th January, 2019 (copy enclosed). The proviso to the amended Rule 38 of the CCS(Pension) Rules provides that a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service before completing qualifying service of ten years, may also be granted invalid pension in accordance with sub-rule (2) of rule 49, subject to the conditions that the Government servant:

- (a) was examined by the appropriate medical authority either before his appointment or after his appointment to the service or post and was declared fit by that authority for Government service, and
- (b) fulfils all other conditions mentioned in this rule for grant of invalid pension.

2. In this connection, it is clarified that the condition of qualifying service of ten years for grant of pension under Rule 49(2) of the CCS (Pension) Rules, 1972 shall not be applicable in the case of a Government servant retiring on Invalid Pension on account of any bodily or mental infirmity, under Rule 38. Accordingly, Invalid Pension at the rate of 50% of emoluments or average emoluments, whichever is more beneficial, subject to a minimum of nine thousand rupees per mensem and maximum of one lakh twenty five thousand rupees per mensem, shall be payable to a Government servant who retires under Rule 38 of CCS (Pension) Rules, 1972 even before completing a qualifying service of ten years.

3. All Ministries/Departments are requested that the above clarification may be brought to the notice of Heads of Department, Attached and Subordinate Offices, Controllers of Accounts, Pay & Accounts Officers, etc. under them.

4. Hindi version will follow.


(Harjit Singh)
Director

To

All Ministries/Departments of the Government of India

Copy to: Technical Director, NIC, Department of Pension & PW with the request that the above OM may be uploaded on the website of the Department.