

Reduction in Pension and Recovery from Pension already paid.

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There is lot of confusion on the subject of Reduction in Pension already sanctioned and Recovery from Pension already paid.

1. Central Govt. Pensioners except Railway :

1.1. With regard to pensioners governed by the CCS(Pension) Rules 1972, the Rule 8 provide for clearly the provision in this respect. According to this, the pension cannot be reduced, once sanctioned and no recovery from pension can be done, except , in case a pensioner has been convicted of serious crime by a Court of law or pensioner has been found guilty of grave misconduct, that too, after following the laid down procedure.

1.2 The expression `serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923).

1.3 The expression `grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.

1.4 Detailed procedure is provided in these rules if pension is to be reduced or recovery is to be effected , where pensioner is convicted of a serious crime or found guilty of grave misconduct.

1.5 These rules are therefore, very clear and unambiguous.

1.6 Rule 8 of CCS(Pension) Rules 1972, along with Govt. of India's decisions, is attached herewith as Annexure 1 for ready reference. It may be mentioned here that these Rules do not cover Railway employees/officers for whom Railway Service Pension Rules 1993 exist, which are discussed later in this write up.

2. Railway Pensioners :

2.1 Railway Services Pension Rules 1993 as amended up to 28.3.2012, Rule 8 and 9 provide for rules and procedure to be followed for reduction in pension and recovery from pension. According to this, the Pension is subject to future good conduct. Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules. The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

2.2 Serious crime includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923).

2.3 Grave misconduct includes the communication or disclosure of any secret official code or password or any sketch plan, model, article, note, documents or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office under the Government so as to prejudicially affect the interests of the general public or security of the State.

2.4 Detailed procedure is provided in these rules if pension is to be reduced or recovery is to be effected , where pensioner is convicted of a serious crime or found guilty of grave misconduct.

2.5 The provision of rules 8 & 9 are, therefore, very clear and unambiguous.

2.6 However, there is further provision of Revision of pension after sanction contained in Rule 90 of Railway Services Pension Rules 1993 as amended up to 28.3.2012 which says “ Subject to the provisions of rules 8 and 9 pension once sanctioned after final assessment shall not be revised to the disadvantage of the railway servant unless such revision becomes necessary on account of detection of a clerical error subsequently.”

2.7 Detailed procedure has been given in Rule 90 when pension is to be revised to the disadvantage of the railway servant on account of detection of a clerical error subsequently.

2.8 Surprisingly, no details are provided in Rule 90 as to what would constitute a “clerical error”.

2.10 Provision of Rule 90 of Railway Services Pension Rules 1993 as amended up to 28.3.2012 are therefore, very “ambiguous” and are thus unlikely to stand in judicial review before a higher Court of law.

2.11 Railway Services Pension Rules , Rules 8, 9 and 90 are attached herewith as Annexure 2, for ready reference.

C. State Govt. Pensioners :

The State Govts., for their Employees/Officers/Pensioners and for Officers of All India Services, have, in some form or the other made rules exactly on the lines of CCS(Pension Rules) 1972.

D. Judicial Review :

A number of Judgments of various High Courts of India, are available, holding that pension once sanctioned cannot be reduced or recovery from pension made except when a pensioner has been convicted of serious

crime by a Court of law or pensioner has been found guilty of grave misconduct, that too, after following the laid down procedure in each case.

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Annexure 1. Extract Rule 8 of CCS(Pension) Rules 1972 :

8. Pension subject to future good conduct

(1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

2 (b) The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

Footnote 2. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6 (A), Pen.(A)/79, dated the 19th May, 1980.

3 Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of 4[rupees three hundred and seventy-five] per mensem.

Footnote 3. Inserted by G.I., Dept. of Per. & A.R., Notification No. F. 38 (4) Pen. (A)/80, dated the 8th August, 1980.

4. Substituted by G.I., Dept. of P. P.W., Notification No. 2/18/87-P. &P.W. (PIC), dated the 20th July, 1988, published as S.O. No. 2388 in the Gazette of India, date the 6th August, 1988.

(2) Where a pensioner is convicted of a serious crime by a Court of Law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1),

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the 1[appointing authority] such representation as he may wish to make against the proposal; and Footnote : 1. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6(A), Per. (A)/79, dated the 19th May, 1980.

(b) take into consideration the representation, if any, submitted by the pensioner under Clause (a).(4) Where the authority competent to pass an order

under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the President, shall lie to the President and the President shall, in consultation with the Union Public Service Commission, pass such orders on the appeal as he deems fit.

EXPLANATION. - In this rule, -

(a) the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) the expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.

8. GOVERNMENT OF INDIA'S DECISIONS

Stoppage or reduction of pension for reasons other than misconduct not permissible
Intimation of cases of convicted pensioners

(1) Stoppage or reduction of pension for reasons other than misconduct not permissible. - Pension are not in the nature of reward but there is a binding obligation on Government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned, its continuance depends on future good conduct vide Article 351, CSR [Rule 8, CCS (Pension) Rules, 1972] but it cannot be stopped or reduced for other reasons.

[G.I., M.F., U.O. No. D-2776/E, V/52, dated the 8th May, 1959.]

(2) Intimation of cases of convicted pensioners. - Under Article 351, CSR [Rule 8, CCS (Pension) Rules, 1972] future good conduct is an implied condition of the grant of every pension and Government has the right to withhold or withdraw a pension or any part of it if the pensioner is convicted of a serious crime or found guilty of grave misconduct. It is, therefore, necessary to ensure that cases where pensioners are convicted by a Court of any crime are also brought to the notice of Government. The Government of India, Ministry of Home Affairs, therefore, request that if the State Government have no objection, instructions may kindly be issued to prosecuting officers under the control of the State Government to ensure the prompt intimation of such cases to the administrative authorities concerned in future.

[G.I., M.H.A., O.M. No. 50/2/59-Ests. (A), dated the 7th October, 1959.]

Annexure 2.

Railway Services Pension Rules 1993 as amended up to 28.3.2012 Extract Rule 8 :

8. Pension subject to future good conduct- (1)(a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy five per mensem.

(2) Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under the sub-rule (1)

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit , within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the appointing authority, such representation as he may wish to make against the proposal; and

(b) stake into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed.

**(5) An appeal against an order under sub-rule (1), passed by any authority other than the President shall, in consultation with the Union Public Service Commission, pass such orders on such appeal, as he deems fit.
Explanation: In this rule the expression-**

(a) serious crime includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) grave misconduct includes the communication or disclosure of any

secret official code or password or any sketch plan, model, article, note, documents or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office under the Government so as to prejudicially affect the interests of the general public or security of the State.

Extract Rule 9 :

9. Right of the President to withhold or withdraw pension.

(1) The President reserves to himself the right of with holding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement; Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem.

(2) The departmental proceedings referred to in sub-rue (1) -

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service. Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not institute while the railway servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service.

(1) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial

proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 10 shall be sanctioned.

(Authority: Railway Board's letter No. F(E)III/99/PN 1/(Modification) dated 23.5.2000)

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

Extract Rule 90 :

90. Revision of pension after sanction.

(1) Subject to the provisions of rules 8 and 9 pension once sanctioned after final assessment shall not be revised to the disadvantage of the railway servant unless such revision becomes necessary on account of detection of a clerical error subsequently:

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Railway Board if the clerical error is detected after a period of two years from the date of sanction of pension.

(2) For the purpose of sub-rule (1), the retired railway servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the railway servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment shall be adjusted in installments by short payments of pension in

future, in one or more installments, as the Head of Office may direct

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Extract Rule 8 of CCS(Pension) Rules 1972 :

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(4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the President, shall lie to the President and the President shall, in consultation with the Union Public Service Commission, pass such orders on the appeal as he deems fit.

EXPLANATION. - In this rule, -

(a) the expression `serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) the expression `grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State.

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Stoppage or reduction of pension for reasons other than misconduct not permissible

Intimation of cases of convicted pensioners

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Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy five per mensem.

(2) Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under the sub-rule (1)

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit , within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the appointing authority, such representation as he may wish to make against the proposal; and

(b) stake into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed.

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Extract Rule 9 :

9. Right of the President to withhold or withdraw pension.

(1) The President reserves to himself the right of with holding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement; Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem.

(2) The departmental proceedings referred to in sub-rue (1) -

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service. Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

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(i) shall not be instituted save with the sanction of the President;
(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service.

(1) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are

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(Authority: Railway Board's letter No. F(E)III/99/PN 1/(Modification) dated 23.5.2000)

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.

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Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Railway Board if the clerical error is detected after a period of two years from the date of sanction of pension.

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