COORDINATION OF BANK PENSIONERS' AND RETIREES ORGANISATIONS

Flat No. 1103, Block-3B, S.M.R. Vinay Fountainhead, Culvary Temple Road,
Hydernagar, Hyderabad – 500 049.

A.Ramesh Babu
Joint Convener
Flat No 1103, Block 3B,
S.M.R. Vinay Fountainhead,
Culvary Temple Road,
Hyderabad 500 049
E-mail: babu2609@gmail.com
Mobile: 09849381995

K.V.Acharya
Joint Convener,
J-208 Vijay Rattan Vihar,
Sector 15, Part II,
Gurugram 122001
E-mail: acharyavedavyasa46@gmail.com
Mobile: 09868220338

Circular No. 011/2018 **Dated: 01.06.2018**

TO

THE GENERAL SECRETARIES
Constituents of C B P R O

Dear Comrades,

Sub: Honourable Supreme Court Judgement regarding 100% DA Neutralisation.

We refer to our circular no. 010/2018 dated 16.05.2018 on the above subject wherein we gave the brief and operative part of the judgement delivered by the Honourable Supreme Court and assured our members that a detailed circular will be issued after studying and analysing the full judgement.

The Order of the Honourable Supreme Court has shocked the retirees in the banking industry who were hoping for a favourable judgement. We wish to reiterate that the hopes of our rank and file were not unfounded as the same were based on the principles of equity, fairness and reasonableness as provided under Article 14 of the Constitution of India. There were strong reasons to strengthen our hopes on 1st August 2017 after conclusion of arguments before the division bench. It is worth mentioning that after hearing the arguments both the judges had a brief interaction between them and then the bench made the following observations to the senior counsels of all the parties to the case.

"This court has already dismissed the appeals of retirees against the orders of the High Court of Madras on similar issue and there cannot be two different and contradictory judgements by this court on the same matter. Therefore there are three options:

1. We recall the earlier order in case of Madras High Court appeal and then pass a fresh order in this case.
2. We refer this case to a larger bench for disposal.
3. The appellants in case of Madras High Court order file review petitions and we tag the same with this case after condoning the delay."

These observations of the Honourable Supreme Court on 1st August 2017 gave enough indications about the directions in which the case was heading. The option 3 of the above was pursued and all the appellants in case of Madras High Court filed their review petitions which were tagged with the case of United Bank of India, the delay was condoned and arguments heard on 23rd August 2017. The Honourable Bench reserved the judgement after hearing the argument of concerned parties. The judgement was pronounced in Court on 16.05.2018 by allowing the appeals of United Bank of India and others setting aside the judgements and orders of the Honourable Court of Calcutta in appeals and dismissing the writ petition no. 507 of 2012 preferred by respondents namely United Bank of India Retirees' Welfare Association and others. We feel that the judgement of the Honourable Supreme Court suffers from the following inaccuracies and inconsistencies:

1. The Honourable Court has analysed the issue of D.A. neutralisation as per tapered method at different rates vis-a-vis 100% neutralisation and made observations in paras 21 to 25. The analysis under para 21 is erroneous in as much as the issue was not that whatever benefit was enjoyed by the employees who retired before November 2002 with tapered methodology of D.A. neutralisation was taken away, it was rather the improvement in D.A. neutralisation from tapered to 100% as allowed to those employees who retired after November 2002 was not extended to those who retired before November 2002. Since all the retirees constituted a homogenous group and were getting D.A. neutralisation under tapered methodology, creating an arbitrary classification by fixing 1.11.2002 as cut off date for extending the benefit of 100% neutralisation was not only discriminatory but also violative of the principle laid down by the Honourable Supreme Court in the case of D.S. Nakara.

2. The Division Bench relied on the judgement in case of Kallakkurichi Taluk Retired Officials Association, Tamil Nadu while observing that the dearness relief is relatable to the cost of living index and varies in direct proportion to the same. It must be borne in mind that dearness relief is an amount paid to the retirees to neutralize the astronomical rise in prices. The object of paying dearness relief is the same irrespective of the date on which the employee retires. Inflation hits the employees who retire before the cut off date as hard as it does those who retire later. Therefore dearness relief cannot be different to two sets of retirees. Holding the distinctions between the pre November 2002 retirees and post November 2002 retirees to be unreasonable, arbitrary and discriminatory. The Division Bench directed the Bank to pay dearness relief to all pensioners at the same rate. It is beyond comprehension as to how such a reasoned and merited judgement could be set aside by disregarding the principles

held in case of D.S. Nakara and Kallakkurichi Taluk Retired Officials Association, Tamil Nadu.

3. It was held in case of D.S. Nakara that if the State considered it necessary to liberalise the pension scheme, we find no rationale principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to the government servants, then those who retired earlier cannot be worse off than those who retired later. The artificial division has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. It is thus clear that 100% D.A. neutralisation being a liberalisation and improvement with regard to calculation of D.A. to the retired employees cannot be denied to one set of retirees on the basis of any artificial and arbitrary classification by stipulating a cut off date. It was also observed that for the purpose of revised computation of D.A. according to liberalised formula was to extend the benefit of improvement to all existing retirees irrespective of the date of their retirement as they constitute one class and any further division within that class being impermissible.

4. It was held in case of D.S. Nakara that there could be justification in making a distinction between two sets of retirees and limiting the new retiral benefit to those who retired after the cut off date. But in this case the change in the methodology of neutralisation of D.A. from tapered basis to 100% is an improvement and not a new retiral benefit. Hence an arbitrary and artificial classification based on a cut off date violates the principle held in case of Nakara.

5. The Honourable Supreme Court has shown an oblivion to the fact that the percentage of D.A. at 0.18% with 100% neutralisation for the present slabs of 1065 works out to 191.70% whereas if the percentage was to be calculated on the basis of tapered methodology for 0.18% upto Rs. 9650 plus 0.15% above Rs. 9650 and upto Rs. 15350 plus 0.09% above Rs. 15350 and upto Rs. 16350 plus 0.04% above Rs.16350, the D.A. percentage would be lower at 162.95%. The similar difference would arise in case of pre November 2002 retirees and hence their effective percentage of D.A. being lower under tapered method would hurt them as they will be denied D.A. on that component of D.A. which is merged with Basic Pay with effect from 01.11.2002 (2288 points). The differential treatment to the pre November 2002 retirees by not extending the benefit of 100% D.A. neutralisation would result in their drawing lesser pension to the extent of Rs. 4368 as illustrated in case of Santipriya Roy on page 16-17 of the order of the Honourable Supreme Court. In face of such facts the observations by the Honourable Supreme Court on Page 35 of the order that it could possibly be said that for those who are with the Basic Pension in the

region of Rs. 6000 on the basis of tapering formula may well, in the ultimate analysis, average to the same level of 0.18% are erroneous as it fails to recognise the fact of merger of D.A. at 2288 points with Basic Pay in case of post November 2002 retirees and thus becoming eligible for computing D.A. and yielding higher quantum in absolute terms. In this backdrop the observations made in para 23 of the judgement are based on erroneous understanding of the methodology of calculating D.A. using tapered rates of neutralisation vis-a-vis calculating D.A. at 100% neutralisation for the entire amount of Basic Pension.

6. The observations by the court that neither the rate of 0.18% can be applied as it would cause great harm and damage to the retirees nor a flat rate of 0.24% can be applied for entire amount of Basic Pension falls short of any rationale or reasonableness. Their assumption that adopting a flat rate of 0.24% as prayed for the retirees who retired before 01.11.2002 will confer better rate than those employees who retired after 01.11.2002 undermines the fact of merger of D.A. at 2288 points for post November 2002 retirees. The merger of D.A. with Basic Pay would help them get higher quantum of Basic Pension resulting in higher amount of D.A. in absolute terms even at 0.18% neutralisation. Their further observations under para 24 that it would be extremely difficult and hazardous to adopt a flat rate as is sought to be projected defies logic and common sense as100% neutralisation at 0.18% is neither difficult nor hazardous then how 100% neutralisation at 0.24% could be termed as extremely difficult and hazardous.

7. The Pension Scheme in the Bank did not become unworkable by changing the methodology of D.A. neutralisation from tapered slabs to 100% in case of those who retired post November 2002 then how it could be assumed that adopting the same methodology by changing the neutralisation of D.A. formula from tapered slab basis to 100% would make the scheme unworkable. A reference to the cases of P.N. Menon and others and Indian Ex-Service League and others under para 25 of order are irrelevant and out of context. When tapering formula was done away with by R.B.I. for all the retirees without any artificial classification based on cut off date and has been working smoothly and successfully, the apprehensions as mentioned in the order are unfounded.

8. As regards taking the settlement as a package deal in totality we are of the view that the settlement did not mention any cut off date to classify the retirees into pre and post November 2002. Hence the assumption of rejecting the settlement in part is arbitrary. The Honourable Court has shown a complete oblivion to the fact that IBA arbitrarily created this discriminatory classification by means of a separate letter dated 28.06.2005 and not through any settlement between the parties.

9. The alibi that a sum of Rs. 1288 crores per annum was agreed in the settlement towards all the benefits and any stepping up of benefit for a section of employees (100% D.A. neutralisation to pre 2002 retirees) is bound to inflate the figure is an untenable and weak argument as the order itself observes that this by itself was not a ground that weighed with them. It is abundantly clear that the amount of Rs. 1288 crores did not and cannot include the cost of future increase in D.A.

10. The observations of the Honourable Court that having confirmed the decision of the Division Bench of Madras High Court the matter stood closed (para 26) are inexplicable in as much as its earlier order confirming the decision of the Madras High Court stood open consequent to filing of review petitions by the aggrieved parties as mentioned in the earlier paragraph on page no. 2.

In view of the foregoing facts we have been consulting the constituents of UFBU, legal experts and senior advocates of Supreme Court so as to explore the further course of action which may include filing a review petition, filing a curative application while simultaneously pursuing the matter with UFBU, IBA and the Government for an amicable resolution of the problem. We will be constantly consulting the constituents of CBPRO regarding all future course of actions. We will also try our best to coordinate with all Apex Bank Retirees Organisations to realise the aspirations and expectations of our Members. We seek cooperation of all concerned in this regard.

With comradely regards,

Yours Comradely,

A.Ramesh Babu **K.V.Acharya**

Joint Conveners