



ALL INDIA BANK PENSIONERS & RETIREES CONFEDERATION
(A.I.B.P.A.R.C.)



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Circular no 145-24

Date: December 16 , 2024.

For circulation among members of the Governing Council, State Secretaries, Special Invitees, Advisors, Affiliates, Constituents of CBPRO and Members.

Dear Comrade,

Sub: Removal of discrimination in the matter of applying Reg 29(5) to retirees of VRS-2000/2001 of erstwhile Associate Banks of State Bank of India.

We are reproducing here under the text of our letter written on 15.12.2024 to the Secretary, DFS, MOF, GOI and Copy to the Chairman, IBA on the above-mentioned subject.

This is for information of members.

With best wishes and regards,

Comradely yours,

Suprita Sarkar
General Secretary
Encl: As stated

AIBPARC/DFS/Reg. 29/Email/2024

Date: December 15,2024

Shri M. Nagaraju,
The Secretary,
Department of Financial Services,
Ministry of Finance,
Jeevan Deep Building,
Parliament Street, NEW DELHI 110001

Respected Sir,

Sub: Removal of discrimination in the matter of applying Reg 29(5) to retirees of VRS-2000/2001 of erstwhile Associate Banks of State Bank of India.

We are making this appeal to remove the discrimination meted to the pensioners in Associate Banks of State Bank of India as against similarly placed pensioners in other Public Sector Banks (PSBs) governed by the very same Bank Employees Pension Regulations, 1995 (BEPR).

1) The grievance of discrimination relates to the **uniform special Voluntary Retirement Scheme (Scheme for short)** approved by the Government vide **Banking Division, (DOE) MOF's Letter No. 11/1/99 IR dated 29-8-2000** for implementation by all Public Sector Banks (PSBs) to rightsize their manpower through a Special VRS carrying a package of ex-gratia and other terminal benefits to those with minimum 15 years' service or 40 years of age. All PSBs implemented it calling it VRS-2000 or VRS-2001 depending on the year of its commencement.



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- 2) Many pensioners in all PSBs were aggrieved due to non-implementation or distortion of an amendment suggested as necessary and as part of the Scheme by the Government so as to harmonize the Pension Regulation with and operationalize the Scheme [vide Letter F. No. 4/8/4/2000-IR Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) New Delhi, dated 5-9-2000]. Realizing that those with service of 20 years and more were alone eligible for pension in terms of Reg.29 of BEPR, the Government deemed it necessary to harmonize the Pension Regulations with the Scheme to help operationalize it by amending Pension regulations to ensure eligibility for pension therein to **also** those with service of 15 years and less than 20 years. The intention and purpose of the amendment was only **to enlarge eligibility for pension** in terms of Pension regulations and **never to diminish or forfeit in part the quantum of pension payable** to any. While State Bank of India (SBI) did not at all carry out the amendment, other PSBs distorted it with a Clarification issued either before or after Scheme's commencement that the benefit under Reg.29(5) would not be available, which diminished the quantum of pension payable to eligible pensioners. As such, it was not a clarification but a distortion of and deviation from the Scheme amounting to resiling from the Scheme. It was ultra vires and void.
 - 3) The aggrieved pensioners in Nationalized Banks sought legal remedy that resulted in their favour in **Bank of India & Anr vs K. Mohandas & Ors on 27 March, 2009 in Civil Appeal No. 1942 of 2009 (arising out of S.L.P. No. 22704/2005)**. IBA communicating the same to all PSBs vide Circular No. CIR/HR&IR/76I-43H/G2/2009-10/1134 dated **August 17, 2009**, advised them to grant the benefit of Reg.29(5) to all such aggrieved pensioners. Nationalized banks complied with it.
 - 4) When all others are hence enjoying the benefit of Reg. 29(5), those in some of the Associate Banks, a too small a section, are deprived as some of the Associate Banks refused to extend the benefit and the courts also upheld the refusal. Distinguishing the judgement in **Bank of India** supra as not applicable to Associate Banks in view of the attendant facts allegedly being at variance, the courts held that in spite of the Associate Banks specifically excluding the benefit **before** commencement of the Scheme itself, the pensioners in these banks knowing full well about the exclusion, made their irrevocable offers and they cannot be, therefore, allowed to resile from the Contract to claim the benefit specifically excluded. Unlike the Supreme court in **Assistant General Manager, State Bank of India & Ors. vs Radhey Shyam Pandey in Civil Appeal No.2463 of 2015 & connected matters**, these benches/courts did not look into whether the banks deviated from the Scheme (including the amendment) and instead looked into only whether the clarification to amendment was advised before or after commencement of the Scheme to decide whether banks or pensioners resiled from the Scheme.
 - 5) Supreme court's decision in favour of the pensioners of SBI in **Assistant General Manager, State Bank of India & Ors. vs Radhey Shyam Pandey** supra was by a three-judge bench, by far the largest bench concerning this dispute and also where issues that were res integra were deliberated. Hence this decision prevails over decisions of other benches/courts and is binding on all.
 - 6) Supreme court ordered in favour of the pensioners when it concluded that SBI's action was wrong due to the following:
 - i) The Scheme was not one conceived by SBI and other banks on their own but was a Scheme approved by the Government. The Scheme inclusive of the suggested amendment was nothing but a contract and obligations and rights therein were governed by Indian Contract Act. Hence, notwithstanding anything contained anywhere, (like Pension regulations), the employees retiring under the Scheme were eligible for all benefits mentioned in the Scheme.
 - ii) The Scheme offered to those retiring under it a whole severance package, comprising payment of ex-gratia and other benefits viz gratuity as per Act/rules, **Pension/PF** and Leave encashment as per rules. All these retirees became eligible for the stated benefits in terms of the Scheme itself. Hence, the reference to pension as per rules in the Scheme is not to determine eligibility for pension but for the purpose of calculation of amount of pension. So, SBI, deeming 'as per rules' as referring to eligibility for pension as per Pension regulations and holding thereby those with service of 15 years and less than 20 years ineligible for pension was wrong.
 - iii) Amendment suggested by the Government because of its necessity became part and parcel of the Scheme and no bank had authority or discretion to unilaterally ignore the amendment without the approval of the Government. SBI denying pension as above was ultra vires and void. It amount to resiling from the Scheme, a contract, and hence impermissible.
 - iv) SBI could not be allowed to take shelter under its circular of clarification issued before Scheme's



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commencement that those retiring with service of 15 years and less than 20 years are ineligible for pension as per pension regulations, or that 'option to withdraw' the VRS applications before a prescribed date was given. Even in the normal course, a clarification can only explain and never alter a subject. More so when the amendment suggested was part of the Scheme. No clarification can deny the eligibility already available under the Scheme itself.

- v) SBI acted without lawful authority and jurisdiction when it denied pension though available under the Scheme and decided not to carry out the amendment. As 'there cannot be estoppel against law', SBI cannot set up the plea of estoppel against those who opted even after the above said clarification and permission to withdraw their offers. SBI could not be allowed to take shelter of its own wrong/inaction (of not amending the Pension regulations). SBI ought to have acted fairly.
- 7) All the above rationale and conclusions are squarely applicable to all other PSBs too,
- i) If SBI denying pension though available in the Scheme was ultra vires, so was Associate Banks denying the quantum of pension as per rules [i.e. benefit of Reg. 29(5)] made available in the Scheme;
- ii) if non-incorporation by SBI of the amendment to Pension regulations to ensure eligibility for pension was violation of the Scheme, so was Associate Banks conveying a clarification on amendment concerning not eligibility for pension but (reduction of) quantum of pension payable that was never the part of the amendment suggested by the Government.
- 8) Further, the clarification did not exclude the applicability of Reg.29 as a whole but excluded only the benefit under Reg.29(5). In fact, the amendment actually carried out in 2002 added a proviso clause to Reg.28 without a non-obstante clause to rule out the applicability of other regulations. No amendment made to Reg.29 to exclude Reg.29(5). Neither the proposed amendment conveyed to employees nor the actual amendment made in 2002 did away with the eligibility for pension under Reg. 29 or the consequential benefit of Reg.29(5). Further, the very use of the word 'also' in the said proviso clause to Reg.28 regarding eligibility for pension is itself an admission that a section of retirees are already eligible for pension under BEPR (i.e. Reg.29). Otherwise too, amendment made only in 2002, a post facto act cannot affect rights [under Reg. 29(5)] already accrued on commencement of the Scheme and definitely on cessation of service in 2001. (Citation relied - **Bank of Baroda And Anr. vs G. Palani And Ors. decided on 13/2/2018 in Civil Appeal No.5525 of 2012 etc).**
- 9) PF optees suffered no diminution of the Bank's PF contribution. Pensioners with service of 15 years and less than 20 years gained pension that was otherwise not available. Pensioners with service of 20 years and above alone are suffering diminution of eligible quantum of pension, though available as per BEPR and the Scheme, which is arbitrary and hence violative of Art.14 of the Constitution.

In view of the foregoing, we request you to kindly consider our legitimate request to extend the benefit of Reg.29(5) to the aggrieved pensioners of erstwhile Associate banks with minimum service of 20 years and advise IBA and SBI accordingly.

With regards

Sincerely yours,

K.V. Acharya.
President, AIBPARC
& Jt. Convenor, CBPRO

Suprita Sarkar
General Secretary

CC: Copy to the Chairman, IBA for information and favourable consideration.