

ALL INDIA INSURANCE EMPLOYEES' ASSOCIATION
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To
All the Zonal /Divisional /State /Regional Units

Dear Comrades,

AIIEA has addressed a letter today to the Chairperson LIC on the issue of pay fixation of Ex-Servicemen re-employed in LIC on or after 01.01.2006. The letter is self-explanatory. Please circulate it among our members.

With Greetings,

Comradely Yours



General Secretary

The Chairperson
L.I.C. of India
Central Office
MUMBAI

Date: 07.06.2024

Dear Sir,

Re: Fixation of Pay of Ex-Servicemen re-employed by LIC on or after 01.01.2006

This has reference to our letters of even reference dated 17.10.2017, 24.01.2023 and umpteen rounds of discussions at Central Office level on the issue cited above.

At the cost of repetition, we would like to inform that implementation of CO Circular marked CO/Per/ER-A/147/2017, dated 06.01.2017 has not only resulted into unjustified recovery from the former defence employees but subjected them to huge financial difficulties for absolutely no fault of theirs. Our contention, right from the day one, has been that the fixation of re-employed ex-servicemen in LIC was neither wrongly done nor was it a mistake as it was governed by the then CO circular ZD/687/ASP/89 dated 02.06.1989. We have been arguing that fixation of pay of ex-servicemen retrospectively on the basis of guidelines applicable to public sector banks is neither fair nor legally tenable. We have also argued in many occasions that these revised guidelines are not binding on LIC since they do not take the force of a validly made rule under Section 48 of the LIC of India Act, 1956. Our contentions now appear to be more than corroborated by some correspondences of the Ministry of Defence and the DoPT, Government of India, as well as three judgments of the Hon'ble High Court of Kerala and one judgment of the Hon'ble High Court of Jabalpur.

CO Circular marked CO/Per/ER-A/147/2017, dated 06.01.2017 states that **“MSP (Military Service Pay) has not been included in the pre-retirement pay as per the Definition given by the Ministry of Defence vide Letter No. 1/69/2008/D (Pay/Service) dated 24.07.2009, the protection of the component of MSP in re-fixation of Pay in Corporation has been excluded.”** Thus, according to this circular pre-retirement pay is defined and MSP is excluded from pre-retirement pay as per the above noted letter of the

Ministry of Defence. But Ministry of Defence has subsequently clarified vide their OM No.369/D (P/S)/20 dated 03.11.2020 **(enclosed and marked A)** that “MOD letter No. 1/69/2008/D (Pay/Service) dated 24.07.2009 pertains to pay and allowances of Retired/ Released Armed Forces Officers on re-employment in the Armed Forces. It is also clarified that PBORs (Personnel Below Officer Rank) of the Defence Services are not re-employed in the Armed Forces after retirement”. This clearly shows that the MoD letter dated 24.07.2009 on the basis of which MSP was withdrawn from pay fixation by LIC is not applicable to Ex-Servicemen re-employed in LIC.

Further, the revised Circular of LIC marked CO/Per/ER-A/147/2017, dated 06.01.2017 for pay fixation of Ex-Servicemen re-employed in LIC of India was evidently issued under the advice of the Department of Financial Services (DFS) vide their advisory/missive bearing File No. 4/3/2012-welfare dated 17th February 2014 asking LIC to implement the guidelines on the subject as applicable to the public sector banks with a retrospective effect from 01.01.2006. A closer scrutiny of the said IBA guidelines **(enclosed and marked B)** makes it amply clear that these were based on the government guidelines/ instructions in force, issued vide DoPT OM No.3/19/2009-Estt (Pay II) dated 5th April 2010 **(enclosed and marked C)** and clarification given vide OM No. 3/19/2009-Estt (Pay II) dated 8th November 2010. To put it simply, the IBA guidelines on the basis of which LIC issued its revised instructions were based on guidelines issued in the first place by the DoPT. That is to say, DoPT guidelines formed the bedrock of the revised LIC circular dated 06.01.2017 on the basis of which pay fixation of re-employed Ex-Servicemen was done with a retrospective basis. It is precisely here that lies the problem.

On more than one occasion the DoPT has clarified, vide DoPT OM No. 1435275/20-Estt (Pay II) dated 26th November 2020 **(enclosed and marked D)** and OM No. 1418309/20-Estt (Pay II) dated 4th December 2020 **(enclosed and marked E)**, that instructions issued by DoPT are applicable to Central Government civilian employees and posts. **These are not suo moto applicable to autonomous bodies, PSUs, Banks etc. which are governed by their own set of rules/regulations.** Furthermore, as an annexure to OM No. 1435275/20-Estt (Pay II) dated 26th November 2020, DoPT has attached its comments on the Draft Order prepared by the DFS in compliance of the common judgment of the Hon'ble High Court of Kerala in various Writ Petitions regarding pay fixation of Ex-Servicemen re-employed in public sector Banks. In this also the DoPT has reiterated the same position. In OM No. 1457323/21-Estt. (pay II) dated 4th August 2021 **(enclosed and marked F)**, DoPT has again pointed out that the instructions/ orders issued by DoPT do not apply to re-employment in Banks.

Thus, it is clear that CO Circular dated 06.01.2017 is not in keeping with the instructions/ clarifications of MoD or the DoPT. In fact, in the Annexure to the above mentioned OM dated 26th November 2020 **(enclosed and marked D)**, the DoPT has clearly stated that “the instructions issued by Indian Banks Association (IBA) vide their Circular dated 30.01.2014 are not as per the guidelines issued by this Department in letter and spirit”. It was vide this Circular that IBA advised Banks to implement revised guidelines regarding pay fixation, which later LIC also followed. Moreover, these two aspects were clarified and conveyed to LIC by DFS itself vide their letter No.4/4/2021-Welfare, dated 3rd November 2021 **(enclosed and marked G)**. Also, the DFS in their letter dated 30.12.2013 **(enclosed and marked H)** suggested IBA that “the date of implementation of these guidelines, prospective or retrospective and the mode of tackling effect of financial implications, if any also needs to be clarified”. This clearly shows that the DFS, Govt of India, has neither insisted nor was particular that these guidelines should be implemented retrospectively. The above clarifications clearly suggest that MSP can also be counted while arriving at pre-retirement pay that is to be protected and LIC need not follow the DoPT guidelines for pay fixation of Ex-Servicemen employees and can go by its own rules/regulations. LIC can very well therefore decide to implement the revised guidelines prospectively.

It is unfortunate that in spite of these clear-cut instructions, LIC has not taken a lenient approach on the issue as a result of which a large number of Ex-Servicemen employees have been forced to take recourse to the court of law. You are aware that the Hon'ble High Court of Kerala, vide their judgment in W.A. No. 1875 of 2022 and other related cases dated 20.01.2023, not only directed LIC to release the amounts recovered from the salaries of the Ex-Servicemen but applied the principle of 'costs following cause' and imposed an amount of Rs.7500/- as costs on LIC to be paid to each of the petitioners 'for the purpose of curbing frivolous and vexatious litigations'. Recently, Hon'ble High Court of Kerala vide their judgment in W.A. No. 922 of 2023 dated 22nd February 2024 has not only set aside the pay fixation with retrospective effect but the pay fixation as such has been set aside. Similarly, our contentions seem to have been vindicated by the Hon'ble High Court of Jabalpur vide their judgment in W.P. No. 3534 of 2018.

Over and above what has been stated above, it is a well recognised principle of law that if any amended rule affects the benefit already given then such rule would not be permissible to make it retrospectively. It is in view of this inviolable principle of law that whenever the Ministry issues any notification concerning our service condition, the related notification carries with it an Explanatory Memorandum declaring therein that "It is certified that no employee of the Life Insurance Corporation of India is likely to be adversely affected by this notification being given retrospective effect". Since the advisory missive regarding pay fixation has been given retrospective effect and it impacts the employees adversely, it requires reconsideration at your level.

We, therefore, request you to re-examine the issue in the light of the clarifications given by the Ministry of Defence (MoD), Department of Personnel and Training (DoPT), Department of Financial Services (DFS), different judgments of the Hon'ble High Courts of Kerala and Jabalpur and also in accordance with the extant law of the institution as cited above. We request that the revised guidelines of LIC vide CO Circular dated 06.01.2017 should not be made applicable to those Ex-Servicemen who had joined LIC before the issuance of this circular and in whose cases the pay had already been fixed under the then validly framed guidelines.

Thanking You,

Yours faithfully
Sd/-
General Secretary