

RB. Estt. No.106/2009

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(D&A) 2009 RG6-18

New Delhi, 16/6/2009

The General Manager(P)
All Indian Railways and
Production Units etc.
(As per standard list).

Sub: Withdrawal/withholding/recovery of pension/gratuity in the case of
minor penalty proceedings.

A copy of Department of Personnel and Training's O.M. dated 110/9/2003-AVD-1 dated 13.4.2009 on the above subject is sent herewith. Contents of O.M. dated 13.4.2009 mentioned above, may please be brought to the notice of all concerned on your railway for their information and compliance. O.M. No. 134/10/80-AVD-1 dated 28.2.81 and O.M. No. 134/9/86-AVD-1 dated 31.7.87 mentioned in the aforesaid O.M. dated 13.4.2009 have been circulated on the railways under Board's letter No. E(D&A) 81 RG6-26 dated 23.7.81 and No. E(D&A) 87 RG6-113 dated 11.11.87.

2. Please acknowledge receipt.

Sd/-
(Harish Chander)
Dy. Director Estt. (D&A)
Railway Board

No.110/9/2003- AVD-I
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi Dated the 13th April, 2009

Office Memorandum

Subject: Withdrawal/withholding/recovery of pension/gratuity in the case of minor penalty proceedings.

The undersigned is directed to refer to this Department's OM no 134/9/86-AVD-I dated 31st July 1987 wherein it was clarified that the Central Government has the power to withhold or withdraw pension even as a result of minor penalty proceedings instituted against a charged officer during his service and which had continued after his retirement provided grave misconduct or negligence is established. The underlying basis for this OM was that there can be circumstances wherein proceedings initiated for minor penalty could result in establishment of grave misconduct or negligence on conclusion of the proceedings warranting a cut or withholding of pension or recovery of pecuniary loss. The OM of 31st July 1987 was issued in cancellation of the earlier OM no 134/10/80 -AVD-I dated 28th Feb 1981 which inter alia, stated that 'grave misconduct or negligence' cannot be established as a result of minor penalty proceedings.

2. The OM of 31.7.1987 came for scrutiny before the Central Administrative Tribunal (CAT), Principal Bench, Delhi in OA no 2068 of 2002 (R.S Sagar, NOIDA,UP Vs Union of India), pertaining to the Ministry of Urban Development and Poverty Alleviation. The Hon'ble Tribunal was considering an application against the order of withholding of gratuity of a charged officer who had retired from service. The Tribunal, while considering the said case set aside the said OM of 31st July 1987 of this Department holding it ultra vires the CCS(Pension) Rules 1972. The ratio of the decision in this OA was applied to OA no 132 of 2003 (I.K Rastogi Vs Union of India) by Principal Bench, Delhi. This Department was neither a party nor impleaded in the said OAs at any stage.

3. The implication of the judgement of Hon'ble CAT on this Division's O.M. of 31.7.87 was considered in consultation with Department of Pension & Pensioners' Welfare and Department of Legal Affairs and it was noted that the matter has attained legal finality.

4. In view of the above and in the light of said order of Hon'ble CAT Principal Bench setting aside the OM of 31st July 1987 this Department's OM no 134/10/80 –AVD-1 dated 28th Feb 1981 stands restored and the OM of 31st July 1987 stands withdrawn.

Hindi version will follow.



(P.K Ravi)

Under Secretary to the Government of India

To
All Ministries /Departments
(As per list attached)

No. 110/9/2003-AVD-1

Dated the 13th April, 2009

Copy forwarded to:-

1. The Secretary, Central Vigilance Commission, Satarkta Bhawan, INA, GPO Complex, Lodhi Road, New Delhi.
2. The Secretary, Union Public Service Commission, Shahajahan Road, Dholpur House, New Delhi.
3. All Sections/Desk of DOPT.