

**GOVERNMENT OF ANDHRA PRADESH  
ABSTRACT**

PENSIONS – Sanction of difference on commutation of pension to the Government Servants who retired between 01-07-1998 to 31-03-1999 – Implementation of Supreme Court of India Judgement in S.L.P.(C) No. 5394-5470 of 2004 – Orders -Issued.

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**FINANCE (PENSION-I) DEPARTMENT**

G.O.(P).No.108

Dated: 03-05-2006

Read the following:-

1. G.O. Ms No. 39 General Administration (Spl.A) Department dt. 31-01-1998.
2. G.O. (P) No. 114 Finance (PC.I) Department dated 11-08-1999.
3. G.O. (P) No.156, Finance (Pen.I) Department dated 16-09-1999.
4. G.O. (P) No.157, Finance (Pen.I) Department dated 16-09-1999.
5. G.O. (P) No.158, Finance (Pen.I) Department dated 16-09-1999.
6. G.O. Ms No.206, Finance (PC.I) Department dated 23-12-1999.
7. A.P.A.T. Orders dated 14.6.2002 in O.A. No.257 of 2001 and batch cases.
8. A.P. High Court Orders dated 10.9.2003 in W.P. No.20755 of 2002 and batch cases
9. Judgment order of Supreme Court of India dated 11.11.2005 in SLP (C) Nos.5394-5470 of 2004.
10. G.O.Ms.No.392 Finance and Planning (FW-Pension-I) Dept. dt. 02-12-1993.
11. G.O.Ms.No.189 Finance and Planning (FW-Pension-I) Dept. dt. 18-07-1995.
12. G.O.(P).No.248, Finance (Pen.I) Department dated 04-10-2005.

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**ORDER:**

In the Government orders 1<sup>st</sup> read above, orders were issued appointing Sri R.K.R. Gonela, IAS, (Retd.) as Pay Revision Commissioner and the Commission has submitted its report to the Government on 21.7.1999. In the reference 2<sup>nd</sup> read above, orders were issued revising the pay scales of Government servants based on the recommendations of Pay Revision Commission, 1999. In the said orders, inter-alia, it was ordered that the persons who retired between 1-7-1998 and 31-3-1999 shall also be eligible for the Revised Pay Scales, 1999. The notional pay fixed in the Revised Pay Scales, 1999 in accordance with these orders, shall, in such cases count towards pensionary benefits. In the reference 3<sup>rd</sup> read above, orders were issued consolidating the pension based on the recommendations of the PRC 1999. In the said orders, inter-alia, it was ordered that the employees who retired between 1-7-1998 and 1-4-1999 are eligible for revision of their pay in the Revised Pay Scales, 1999 notionally as per the orders issued in the 2<sup>nd</sup> read above. As such, the pension of these employees may be revised notionally as per the revised Pay in Revised Pay Scales, 1999 and monetary benefit should be allowed from 1-4-1999. No difference on Retirement Gratuity and Commutation shall be allowed in the pension notionally fixed as above. Orders were also issued in G.O.(P) No.157 Finance and Planning (FW-Pension-I) Department dated 16-09-1999 raising the maximum limit of Retirement Gratuity under Rule 46 of A.P. Revised Pension Rules, 1980 from Rs.1,75,000/- to Rs.2,50,000/-. Further orders were issued in G.O.(P) No. 158 Finance and Planning (FW-Pension-I) Department dated 16-09-1999 raising the limit for commutation of pension under A.P. Civil Pension (Commutation) Rules, 1944 to 40% of the pension sanctioned to the pensioner. All these orders came into force from 01-04-1999. In the reference 6<sup>th</sup> read above orders were

issued amending the orders issued in the reference 2<sup>nd</sup> read above with reference to para 9 of the said orders stating that “Persons who retired between 1-7-1998 and 31-3-1999 shall also be eligible for the Revised Pay Scales, 1999. The notional pay fixed in the Revised Pay Scales, 1999 in accordance with these orders, shall, in such cases count towards pension notionally and the monetary benefit of the revised pension shall be allowed with effect from 1-4-1999.”

2. Aggrieved by the orders issued by the Government in the references 3<sup>rd</sup> to 6<sup>th</sup> read above, certain Government servants who retired between 1.7.1998 and 1.4.1999 filed O.A.No.257/2001 and batch cases in A.P. Administrative Tribunal, Hyderabad for payment of difference of pensionary benefits including commutation of Pension, Gratuity, and encashment of Earned Leave with effect from 1-7-1998 itself.

3. In the reference 7<sup>th</sup> read above, the Hon`ble A.P.A.T., rejected the request of the petitioners for payment of difference of pensionary benefits including Gratuity and encashment of Earned Leave but directed to pay difference of commutation portion of pension at the existing rate (33.33%) on the difference due to revision of pension consequent on the implementation of 1999 Pay Scales keeping in view the provisions under Rules 3(d) and (e) of A.P. Civil Pension (Commutation) Rules 1944. The operative portion of the judgment is as follows:

*“The applicants are not entitled for gratuity and encashment of earned leave based on their notional pay fixed in the revised scales of pay of 1999. The applicants are also not entitled for enhanced gratuity and enhanced percentage of commutation in terms of the orders issued by the Government G.O.Ms.No.157, Finance Department, dated 16-9-1999 and G.O.Ms.No.158, Finance Department, dated 16-9-1999. The applicants are however eligible for commutation of a portion of revised pension in terms of Rule 3 (d) and 3 (e) of A.P. Civil pension commutation Rules 1944”.*

4. The A.P.A.T after a prolonged discussion in its judgment opined that the applicants are entitled for commutation of pension on the differential portion of pension, which they are entitled to draw with effect from 1-4-1999.

5. Aggrieved by the orders of A.P.A.T., dated 14.6.2002 Government have filed W.P.No.25197/2002 in the Hon`ble A.P. High Court for non-payment of difference of commutation of pension on the ground that the reliance on so called 3(e) of A.P. Civil Pension (Commutation) Rules, 1944 is not correct as the so called Rule 3(e) is in fact issued by way of G.O.Ms.No.189, Finance Department, dated 18.7.1995 which is also an executive order. Therefore as per paras 5 and 17 of G.O. (P) No.156, the respondents are not entitled to commute any portion of the pension and the difference in pension. As per G.O.(P) No.158 also the respondents are not entitled to commutation of enhanced pension. G.O (P) No.158 came into force with effect from 1.4.1999. It is also not an amendment to the A.P. Civil Pension (Commutation) Rules, 1944. Similarly clause 4 of G.O.Ms.No.392 dated 2.12.1993 which is referred by the Hon`ble Tribunal as Rule 3 (d) of A.P. Civil Pension (Commutation) Rules, 1944 is neither part of A.P. Civil Pension

(Commutation) Rules, 1944 nor it is an amendment to the A.P. Civil Pension (Commutation) Rules, 1944. It was also contended that if the A.P.A.T judgment is implemented it would cost Rs.78.08 crores to the State Exchequer. The retired Government employees as well as certain Pensioners Associations also filed several W.Ps. in the High Court against the orders of A.P.Administrative Tribunal for payment of difference of all pensionary benefits including Gratuity, Surrender of Earned Leave etc., .in W.P.No.20755/2002 and batch cases. In the reference 8<sup>th</sup> read above, Hon`ble High Court has given its judgment on 10.9.2003 in W.P.No.20755/2002 and batch cases. The operative portion of the judgment of the High Court is as follows:

*“Thus we find that the Tribunal has failed to properly appreciate these contentions and thus committed an error apparent on the face of the record. Accordingly we set aside the order of the Tribunal and also G.O.Ms.No.156, 157, 158 dated 16.9.1999 and G.O.Ms.No.206, dated 23.12.1999. We declare that the government employees who retired between the period 1.7.1998 and 31.3.1999 are entitled for computation of revised gratuity on the basis of the notional pay drawn. They are also entitled for higher ceiling limits in respect of gratuity and also the commutation of pension. The applicants and similarly situate persons are also entitled for the leave encashment benefit on the basis of notional pay during the relevant period. The Government shall calculate the differential amounts of gratuity, commutation of pension and encashment of leave salary and pay the same to the petitioners and other Government employees referred to above within a period of three months from today with interest at 9% per annum from the date of accrual of the benefits till the date of payment.*

*The Writ Petitions filed by pensioners/ Associations are allowed. W.P.No.25197/2002 filed by the State is dismissed”.*

6. Thus, Hon`ble High Court directed the Government to pay the difference of all the pensionary benefits to the Government servants who retired between 01-07-1998 and 31-03-1999 based on the notional pay fixed in the Revised Pay Scales, 1999.

7. However, Government have filed S.L.P(C) Nos. 5394-5470 of 2004 in Hon`ble Supreme Court challenging the orders of Hon`ble High Court dated 10.9.2003 in W.P.No.20755/2002 by filing SLP (C) No.5394-5470 of 2004 in respect of Government Servants who retired between 1.7.1998 to 31.3.1999. Hon`ble Supreme Court in its interim order dated 29.3.2004 have stayed the operation of the High Court orders dated 10-9-2003 in W.P. No.20755/2002 and batch cases.

8. In the reference 9<sup>th</sup> read above, the Hon`ble Supreme Court in the Judgment dated 11.11.2005 in C.A. No.6704-6780/2005 (arising out of SLP (Civil) No.5394-5470/2004) while setting aside the impugned judgement of the High Court dated 10.9.2003, restored the judgement of the A.P.A.T, dated 14.6.2002. The operative portion of the judgment of the Supreme Court is as follows:

*We, therefore, are of the opinion that the intention of the State was not to grant any benefit towards payment of gratuity even in relation to those employees who had retired in between 1.7.1998 and 31.3.1999.*

*For the reasons aforementioned, the judgment and order of the High Court cannot be sustained. We, however, agree with the Tribunal that the employees are eligible for computation of portion of revised pension in terms of rule 3 of A.P. Civil Pension (Commutation) Rules, 1944. The appeals are allowed. The impugned judgment of the High Court is set aside and as of the Tribunal is restored. No costs.*

9. Thus, in pursuance of the directions of the Hon`ble Supreme Court dated 11.11.2005, Government hereby order that the Government servants who retired between 1.7.1998 to 1.4.1999 are entitled for commutation of pension on the differential portion of pension which they are entitled to draw with effect from 1-4-1999 at 33.33% (i.e., the rate existing at that time). *The arrears on account of sanction of commutation of pension on the differential portion of pension relating to the Government servants who retired between 1.7.1998 to 1.4.1999 will be paid on 1.8.2006.*

10. Orders were issued in the reference 12<sup>th</sup> read above as follows:-

*“The employees who retired between 01.07.2003 and 01.04.2005 are eligible for revision of their pay in the Revised Pay Scales, 2005 notionally, as per the orders issued G.O.(P) No. 213, Finance (PC.I) Department dated 27.08.2005. As such, the pensions of these employees may be revised notionally as per the revised pay in Revised Pay Scales, 2005 and monetary benefit should be allowed from 01-04-2005. No difference on Retirement Gratuity and Commutation shall be allowed on the pension notionally fixed as above and this is subject to outcome of the Special Leave Petition (Civil) Nos. 5394-5470 of 2004 pending in Hon`ble Supreme Court.”*

11. In pursuance of the judgment dated 11-11-2005 of Hon`ble Supreme Court in C.A. Nos. 6704-6780/2005 (arising out of SLP (Civil) No.5394-5470/2004), it is also ordered that the Government servants who retired between 1.7.2003 to 1.4.2005 are also entitled for commutation of pension on the differential portion of pension which they are entitled to draw with effect from 1.4.2005 (at 40% which was the rate existing at that time). *The arrears on account of sanction of this commutation of pension relating to the Government servants who retired between 1.7.2003 to 1.4.2005, will be paid in two instalments during the next financial year i.e., 1<sup>st</sup> instalment on 1.8.2007 and 2<sup>nd</sup> instalment on 1.1.2008.*

12. While sanctioning the above difference of commutation of pension, the pension sanctioning authorities should follow the procedure as laid down in the references 10<sup>th</sup> & 11<sup>th</sup> read above and other procedural instructions in vogue.

13. All the Departments are requested to take action accordingly.

14. This G.O. is available on Internet and can be accessed at the address <http://www.aponline.gov.in> and <http://www.apfinance.gov.in>

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)**

**P. RAMAKANTH REDDY**  
SPECIAL CHIEF SECRETARY TO GOVERNMENT