



सत्यमेव जयते

# **REPORT OF THE SECOND NATIONAL JUDICIAL PAY COMMISSION**

VIGYAN BHAWAN ANNEXE  
NEW DELHI

**MARCH - 2021  
PART - III  
(SUPPLEMENTAL REPORT)**

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Former Judge High Court of Kerala  
MEMBER

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Former Judge Supreme Court of India  
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District Judge, Delhi  
MEMBER-SECRETARY

**PART-III**  
**SUPPLEMENTAL REPORT**

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## **SECOND NATIONAL JUDICIAL PAY COMMISSION**

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### **Corrigendum**

As regards the Fitment Table-II at para 13.3 Pages 73-74 Chapter-II, Vol. I, Part-I of the Report which has also been referred to at page no. 23, Chapter I Vol. II, Part-I of the Report, it is considered appropriate to mention the corresponding pay as per FNJPC so that it would be helpful for the purpose of pension revision. The Fitment Table II at page 73-74 Chapter-I, Vol.-I, Part-I of the Report shall therefore be read as under:

**Table-II (Fitment)**

<b>S.No</b>	<b>Pay as per FNJPC</b>	<b>Existing Pay</b>	<b>New Proposed Pay</b>
1	9000	27700	77840
2	9250	28470	80180
3	9500	29240	82590
4	9750	30010	85070
5	10000	30780	87620
6	10250	31550	90250
7	10500	32320	92960
8	10750	33090	95750
9	11050	34010	95750
10	11350	34930	98620
11	11650	35850	101580
12	11950	36770	104630
13	12250	37690	107770
14	12500	38610	111000
15	12800	39530	114330
16	13150	40450	114330
17	13500	41530	117760
18	13850	42610	121290
19	14200	43690	124930
20	14550	44770	128680
21	14900	45850	132540
22	15250	46930	132540
23	15600	48010	136520
24	15950	49090	140620
25	16350	50320	144840
26	16750	51550	149190
27	17150	52780	149190
28	17550	54010	153670
29	17950	55240	158280
30	18350	56470	163030

31	18750	57700	163030
32	19150	58930	167920
33	19600	60310	172960
34	20050	61690	178150
35	50500	63070	178150
36	20950	64450	183490
37	21400	65830	188990
38	21850	67210	188990
39	22350	68750	194660
40	22850	70290	199100
41	23350	71830	205070
42	23850	73370	211220
43	24350	74910	217560
44	24850	76450	224100

2. The pay level J-6 in the Pay Matrix at para 13.1 page 71, Chapter-II, Vol. I Part-I of the Report finds mention of the figure of Rs.1,72,960/- at entry no.3. Therefore, in Example II at para 13.8 page 82, the last para therein (preceding para 13.9), the following sentence shall be substituted for the existing sentence:

- **“As there is an identical figure of Rs.1,72,960/- at entry no. 3 in Level J-6, accordingly his pay has to be fixed at that figure on such promotion”.**

3. In para 2(f) at page no. 108 of Vol.-III Part I of the Report, for the sake of clarity, the following sentence be added at the end of para 2(f).

- **There shall be no restriction or ceiling on reimbursement in such cases of emergency and the actual medical expenses incurred shall be reimbursed in full.**

**V.K. Gupta**  
**Member Secretary**

## CHAPTER – I

### PREMATURE RETIREMENT OF JUDICIAL OFFICERS BEFORE THE NORMAL AGE OF SUPERANNUATION

1. At the point of time when the retirement age of civil servants of Government of India and most of the State Governments was 58 years or less, the Supreme Court, having regard to the peculiar characteristics of judicial service including the mode of recruitment and the nature of judicial functions, had considered it necessary to confer the benefit of extended age of superannuation to the Judicial Officers. In *All India Judges Association v Union of India and others* 1992 (1) SCC 119 [hereinafter referred to as AIJA-I (1992)] at page 140, the Supreme Court directed that the retirement age of the Judicial Officers shall be raised to 60 years and steps be taken in this regard by 31.12.1992. Further, the Supreme Court directed appropriate amendments to be made in the Rules prevailing in the States and Union Territories in respect of judicial service so as to fix the age of retirement at 60 years with effect from the said date. This was reiterated in the subsequent order of the Supreme Court in *State of Uttar Pradesh v Rama Shankar Pandey*, 1992 Supp (2) SCC 649. The Supreme Court observed that in spite of special features of judicial service, no distinction has been maintained with regard to the age of retirement between the officers of civil services and the officers of judicial service.

2. In the review petition filed by Union of India and the various States, *inter alia*, the direction regarding the increase of superannuation age of Judicial Officers was questioned. It was contended on behalf of Union of India and the

States that the determination of superannuation age is a matter of policy of the Government and the direction given was in violation of the basic structure of the Constitution which envisages separation of powers. The objections were overruled by the Hon'ble Court in the elaborate Judgment rendered in the Review Petition which is reported in 1993 (4) SCC 288 [hereinafter referred to as AIJA-II (1993)/ review judgment]. While overruling the objections, the Supreme Court, however, modified the direction with regard to enhancement of the superannuation age as follows:

"While the superannuation age of every subordinate judicial officer shall stand extended up to 60 years, the respective High Courts should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by flowing the procedure for the compulsory retirement under the Service rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only if he is found fit and eligible to continue in service. In case he is not found fit and eligible, he should be compulsorily retired on his attaining the age of 58 years.

The assessment in question should be done before the attainment of the age of 58 years even in cases where the earlier superannuation age was less than 58 years.

The assessment directed here is for evaluating the eligibility to continue in service beyond 58 years of age and is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken under the relevant Service rules, at the earlier stage/s."

para 52, page 315

## **2.1** At para 30, the Supreme Court observed

"...The benefit of increase of retirement age to 60 years shall not be available automatically to all Judicial Officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those, who, in the opinion of the High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evolved by the appropriate Committees of Judges of the respective High Courts and the evaluation shall be made on the basis of Judicial Officer's past record of service, character rolls, quality of Judgments and other relevant matters."

Again, at para 31, it was clarified –

"...It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement at the earlier stage/s under the respective Service Rules".

**3.** Pursuant to this modified directive, a procedure was evolved by the High Courts for evaluating and reviewing the performance of Judicial Officers in order to arrive at the decision whether the officer is fit to be continued beyond 58 years. In other words, the Judicial Officers who attain the age of 58 years were to be continued in service only on the High Court reaching the conclusion on review of record of service of the Judicial Officer, that s(he) is of continued utility to serve the judiciary.

**4.** With the dawn of new millennium, the rider added by the Supreme Court in the Review Judgment has given rise to multiple reviews, not merely at the age of 58 years, but also at anterior stages starting from 50 years. On the one hand, the Supreme Court was of the considered view that the retirement age of 60 years was reasonable for the Judicial Officers irrespective of the fact that the retirement age for other civil service personnel was 58 years or less at that time. On the other hand, the Supreme Court wanted this benefit to be conferred only to those who are free from blemish and considered fit to discharge the functions. Thus, the idea was not to give the benefit of extended age of retirement (of 60 years) ordained by AIJA-I (1992) case unconditionally, but with a qualification i.e. the Judicial Officer has continued utility to serve. Now that the retirement age has been enhanced by Government of India to 60 years w.e.f. 01.07.1998 and most of

the States thereafter enhanced the retirement age of civil servants to 60 years, the rationale underlying the Supreme Court's directive has lost much of its relevance. However, the rider in the review Judgment that the review at the age of 58 years was in addition to and independent of the assessment for compulsory retirement<sup>1</sup> that may be undertaken under the relevant service rules at the earlier stages has been invigorated and taken to greater heights, as elaborated later on.

**5.** Incidentally it deserves notice that compulsory retirement is one of the major punishments prescribed by the Civil Services (Classification, Control and Appeal) Rules, 1965 framed by Government of India and in similar rules prevailing in other States. The retirement in public interest provided for by the Fundamental Rules of the Central Government is a different concept. Such premature retirement which is often referred to as 'compulsory retirement' is not punitive in nature. A note on premature/compulsory retirement is furnished in **Annexure II** to this Chapter.

**6.** In *Bishwanath Prasad Singh v State of Bihar* (2001) 2 SCC 305, the ratio and dicta of the review Judgment in AIJA-II (1993) case was succinctly summarized thus at paragraph 18.

"1. Direction with regard to the enhancement of superannuation age of judicial officer given in *All India Judges Association v Union of India* does not result in automatic enhancement of the age of superannuation. By force of the judgement a judicial officer does not acquire a right to continue in service upto the extended age of 60 years. It is only a benefit conferred on the judicial officers subject to an evaluation as to their continued utility to the

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<sup>1</sup>The expression 'premature retirement' would be an appropriate expression instead of 'compulsory retirement' which has different connotation, as pointed out by the Supreme Court in *Bishwanath Prasad Singh*, *infra*. It may be mentioned that Rule 56(j) of Fundamental Rules, 1922 applicable to Central Government servants does not use the expression 'Premature' or 'Compulsory' Retirement. The entire Rule 56 deals with 'Retirement' including the age of superannuation, premature and voluntary retirement.



judicial system to be carried out by the respective High Courts before attaining the age of 58 years and formation of an opinion as to their potential for their continued useful service. Else the judicial officers retire at the superannuation age appointed in the service rules governing conditions of service of the judicial officers.

2. The direction given in 1993 case is by way of ad hoc arrangement so as to operate in the interregnum, commencing from the date of judgment and until an appropriate amendment is made in the service rules by the State Government. Once the service rules governing superannuation age have been amended, the direction ceases to operate.

3. The High Court may, before or after the normal age of superannuation, compulsorily retire a judicial officer subject to formation of an opinion that compulsory retirement in public interest was needed. The decision to compulsorily retire must be in accordance with relevant service rules independent of the exercise for evaluation of judicial officer made pursuant to 1993 case. Recommendation for compulsory retirement shall have to be sent to State Government which would pass and deliver the necessary orders.

4. If the High Court finds a judicial officer not entitled to the benefit of extension in superannuation age he would retire at the age of superannuation appointed by the service rules. No specific order or communication in that regard is called for either by the High Court or by the Governor of the State. Such retirement is not compulsory retirement in the sense of its being by way of penalty in disciplinary proceedings or even by way of compulsory retirement in public interest. No right of the judicial officer is taken away. Where the High Court may choose to make any communication in this regard, it would be better advised not to use therein the expression compulsory retirement. It creates confusion. It would suffice to communicate, if at all, that the officer concerned, having been found not fit for being given the benefit of extended age of superannuation, would stand retired at the normal age or date of superannuation."

**6.1** In conclusion, the Supreme Court observed in Bishwanath Prasad Singh's case that a blanket extension in the age of superannuation is not what was intended by the Court and that the rules have to be so framed or amended so as to give the benefit of extended superannuation age only to such Judicial Officers about whom the High Court feels satisfied of their continued utility to judicial system on an objective assessment of their work, conduct and integrity.

**7.** Then, we may refer to another 3-Judge bench decision in *Sri Rajat Baran Roy v State of West Bengal*, 1999 (4) SCC 235. After referring to the observations in the AIJA-II (1993)/review Judgment, the Court observed –

“...it is clear that the direction issued as above, would cease to exist when appropriate rule enhancing retirement age of the Judicial Officers to 60 years is made. Consequently, the rider to the direction issued by the Court also ceases to operate, being co-terminus with the direction. After the directions in the 1993 case, in the case of such States which had framed rules consequent upon which the members of the subordinate judiciary in those States became entitled to continue in service till the age of 60 years, it will have to be held that the enhancement has come into force by virtue of such rules framed. In other words, the enhancement of retirement age in those States will be de hors the directions of this Court and will be subject only to the terms of the rules applicable. In such cases, in our opinion, the pre-retirement assessment will not be applicable unless the same is specifically provided under the rules.”

**7.1** To the same effect are the observations in *High Court of Judicature, Allahabad v Sarnam Singh* (2002) 2 SCC 339. Paragraph 13 is extracted below:

“These observations indicate that the procedure indicated by this Court for evaluating the work, performance and conduct of Judicial Officers, before allowing them to continue in service upto the age of 60 years, was evolved as a temporary measure and was not to be adopted as a permanent feature. The choice was thus left to the appointing authority...”

**7.2** We would like to quote the views recorded by FNJPC in the context in paras 21.39 and 21.40, pages 1120-1121 Volume-III of the Report, which are extracted below:

21.39 Elsewhere in our Report, we have stated that the directions of the Supreme Court have affected the morale of the Judicial Officers. The review of cases for compulsory retirement under the relevant Service Rules should be independently taken up by the High Court, and it should not be linked with the consideration for giving the benefit of service from 58 to 60 years. Therein, we have emphasized and also in our “Preface” to this Report that the cases of Judicial Officers must be periodically reviewed for compulsory retirement once in every five years, that is, at about 50, 55 and 60 years under the respective Service Rules made for the purpose. Such a review must be made by a Committee of Judges of the High Court headed by the Chief Justice. Those who come clean from such review should only be allowed to continue in service till they attain the age of superannuation.

21.40 We have also recommended to delete the Rules made by the High Courts incorporating the directions of the Supreme Court in the Review Judgment in the ALL INDIA JUDGES' ASSOCIATION CASE for compulsory retirement at the age of 58 years. Instead, we have suggested to all High Courts to make a rule specifying only the superannuation age without any condition. We have indicated that once such a rule is made, the said directions of the Supreme Court need not be followed for review of cases of Judicial Officers as observed by the Supreme Court in RAJAT BARAN ROY AND OTHERS v. STATE OF WEST BENGAL AND OTHERS.

**8.** With the passage of time, pursuant to the observations made by the Supreme Court in more than one decision, rules were made either by way of amendments to the Judicial Service Rules or Civil service Rules of the State providing for the retirement of Judicial Officers at the age of 60 years subject to review at the age of 58 years in order to assess their continued utility to serve upto 60 years. In the absence of rules in this regard, the High Courts have been acting on the Full Court resolutions and the guidelines formulated obviously by virtue of the power vested in them under Article 235 of the Constitution read with the direction of Supreme Court in AIJA-II (1993) case.

**9.** While so, the intensive review required to be undertaken before the Judicial Officer crossed the age of 58 years has, in course of time, been extended to anterior stages as well. The review at the age of 50 and 55 years has also become integral part of the rules in most of the States. The same criteria as was being followed for the review at the age of 58 years pursuant to AIJA-II (1993)/review judgment, is being adopted for taking a decision as to public interest retirement after the age of 50 years or so.

**10.** As pointed out earlier, with the enhancement of retirement age of the Government servants, the directive regarding the retirement age in AIJA-I (1992) case had lost much of its relevance. Yet, the frequent reviews have come to stay in the domain of judicial service. Not only the review at the age of 58 continues, but, even the review at the age of 50 and 55 years has been made mandatory. What was an enabling provision paving the way for premature retirement in public interest – which power was being exercised in exceptional cases initially has now become part of the intensive and frequent review exercise hitherto being applied only to consider whether the Judicial Officer was fit to be continued beyond 58 years. The rider in AIJA-II (1993)/review judgment has been carried, perhaps, too far. The general observations in some of the Judgments have been pressed into service and the power of premature retirement starting from the age of 50 years (apart from review at 58 years) is being resorted to and the rules to that effect have been framed in most of the States. This is the scenario that manifested itself in the new millennium.

**10.1** In the early stages i.e. soon after the AIJA-II (1993)/review judgment, the High Courts were only resorting to the power of weeding out unfit Judicial Officers on review at the age of 58 years. But, by virtue of the rules framed or otherwise, the review for the purpose of considering the continuance of the Judicial Officer upto the age of 60 years has become a regular feature starting from the age of 50 years. Thus, the pronouncement of Supreme Court which was intended to benefit the Judicial Officers has now turned out to be too harsh and drastic. The rider added by the Supreme Court leaving it open to invoke the State Service Rules

as to premature retirement has acquired primacy. The one stage review (at the age of 58) as per the directive of the Supreme Court in AIJA-II (1993)/review judgment to assess the continued utility to serve upto 60 years has now been extended to **three** stages, the first stage being on the attainment of the age of 50 years, second at the age of 55 years and the third at the stage of 58 years. In some States, such review can be done even on completion of 10 or 15 years of qualifying service even though the Officer has not attained the age of 50 years till then.

**11.** The shape and turn which the Rules apparently framed to give effect to the directive in the AIJA-II (1993)/review judgment have taken is discernible from the Rules in force in various States. We have referred to them in *extenso* in **Annexure-I**.

**12.** On a conspectus of the Rules in force dealing with the premature/ compulsory retirement of Judicial Officers at the age earlier to 60 years, it is noticed that there are broadly 3 or 4 categories as follows:

**(i)** Review/evaluation of service record for the purpose of assessing the Judicial Officer's continued utility to serve up to the age of 60 years is undertaken before the Judicial Officer attains the age of 58 years and the same is specifically laid down in Judicial Service Rules in conformity with AIJA-II (1993)/review judgment of AIJA-I (1992).

While so, no provision for compulsory/premature retirement is provided for in the Judicial Service Rules. However, the power to retire compulsorily

in public interest at an earlier stage (at the age of 50, 55 years etc.) on a review of the officer's conduct/performance can be resorted to by invoking the relevant Civil Service rules of the States concerned akin to Rule 56(j) of Fundamental Rules. Such power is invoked as and when considered necessary.

This is the rule position in **Delhi, Meghalaya** and **Tamil Nadu**.

In Tamil Nadu, the relevant provision says that the Judicial Officers at various levels shall retire from service on attaining the age of 60 years subject to formation of opinion by the High Court of Madras that the Judicial Officer has potential for continued useful service beyond the age of 59 years. The age of 59 years is mentioned in Tamil Nadu rule for the reason that the superannuation of the Government servants was increased to 59 years w.e.f. 01.06.2020 and now it has been further increased to 60 years vide G.O. (Ms) No. 29 dated 25.02.2021.

**(ii)(a)** While declaring that the judicial officer shall ordinarily retire on attaining the age of 60 years, the concept of compulsory retirement in public interest is engrafted into the rules governing judicial service. The review is not confined to the stage of 58 years only, but it is required to be done at three stages i.e., before the Judicial Officer attains 50 years, 55 years and 58 years and the unfit officers are compulsorily retired in public interest subject to the observance of the procedure for such retirement such as 3 months' notice or pay in lieu thereof.

In other words, the review at the age of 58 years in order to consider the fitness of the Judicial Officer to continue upto 60 years remains. However, the rules in certain States go further and provide for review at the earlier stages as well

i.e. at the age of 50 years and 55 years and the exercise of power of retirement in public interest based on the recommendation of the High Court. This is the position in Madhya Pradesh, Maharashtra, Goa, Himachal Pradesh, J & K, Punjab, Uttarakhand, Odisha, Kerala, Assam, Manipur etc.

The emphasis is added in some of the Rules that the review shall be done atleast three (3) times.

In Madhya Pradesh, Rule 14 sub-rule (1) of the M.P. Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2017 provides that a member of service shall retire at the age of 60 years, provided he is found fit and suitable to continue in service after 58 years by High Court. At the same time, sub-rule (2) which starts with a non-obstante provision lays down that a member of service “may, in public interest be retired at any time after he has completed **ten (10) years**<sup>2</sup> of service or on attaining the age of 50 years, whichever is earlier”. Sub-rule (3) says that the Chief Justice may constitute a Screening Committee for the purpose of taking a decision under sub-rule (1) or (2).

In Maharashtra, Rule 17 of Maharashtra Judicial Service Rules, 2008 provide that every member of Judicial Service shall retire by superannuation at the age of 60 years subject to clearance by special review committee constituted by Chief Justice of High Court for the purpose. And Rule 19 provide for retirement in public interest at the age of 50 years, 55 years or 58 years.

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<sup>2</sup> (emphasis supplied)

In the State of Kerala, Rule 60(aa) of Kerala Service Rules, Part-I provide for age of retirement of the officers of the Kerala Judicial Service and Kerala State Higher Judicial Service to be 60 years and his continuance in the service beyond the age of 58 years shall be subject to review by the High Court. And Rule 7(a) of the Kerala State Higher Judicial Service Rules provide for compulsory retirement in public interest at the age of 50 years, 55 years and 58 years.

In Assam, Rule 19 Sub-Rule A of Assam Judicial Service Rules, 2003 provides for age of retirement of the Judicial Officers to be 60 years. Sub-Rule B provide for assessment and evaluation by a Committee constituted and headed by the Chief Justice as to the potential to continue with service upto the age of 60 years. Sub Rule B(v) which is negatively worded lays down that the officer shall be deemed to have been denied the benefit of extension unless a specific order to that effect is passed and communicated. Further Rule 20 provides for retirement in public interest at the age of 50 and 55 years.

**b)** Broadly, the position is the same in the States of Andhra Pradesh, Telangana, West Bengal & Gujarat. However, there is no specific provision for review at 58 years.

The provision in Andhra Pradesh and Telangana is incorporated in a statutory enactment – A.P/Telangana Public Employment (Regulation of Age of Superannuation) Act, 1984. Section 3 reads as :

3. Age of superannuation : (1) Every Government employee, not being a workman and not belonging to Last Grade Service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years.



(1A) Notwithstanding anything contained in Sub-Section (1), every member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years;

Provided that any such member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service may be compulsorily retired from service on the afternoon of the last day of the month in which he attains the age of fifty years or fifty five years or fifty eight years or thirty three of qualifying service, if he is found not fit and eligible to be continued in service by the High Court of Andhra Pradesh, on an assessment and evaluation of the record of such member for his continued utility, well within time, before he attains the age of fifty years or fifty five years or fifty eight years or thirty three years of qualifying service.

Provided further that any member of service after giving three months notice in writing or three months of pay and allowances in lieu of notice may be required to retire in public interest from service on the date on which such member attains the age of fifty years or fifty five years or fifty eight years or thirty three years of qualifying service or any date thereafter to be specified in the notice.

Provided further also that any such member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service at his option to be exercised in writing before he attains the age of fifty seven years may retire from service on the afternoon of the last day of the month in which he attains the age of fifty years.

Explanation : The assessment and evaluation by the High Court of Andhra Pradesh for the purposes of this sub-section is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken at any other time under the relevant rules applicable to such members of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service.

The constitutional validity of the above proviso was upheld by the Supreme Court.

West Bengal and Gujarat Rules are more or less similar to Andhra Pradesh Provision.

In West Bengal, Rule 36 of the West Bengal Judicial (Conditions of Service) Rules, 2004 provides for age of superannuation of a Judicial Officer to be 60 years and Rule 34 provides for retirement in public interest on completion of 25

years of service or on attaining the age of 50 years whichever is less and again at the age of 55 years and 58 years for continuity of service.

In Gujarat, Rule 22 (1) of Gujarat State Judicial Services Rules 2005, while declaring the age of superannuation of a member of the service as 60 years, qualifies the same by laying down:

“Notwithstanding anything contained in these rules, the Governor shall, on the recommendation of the High Court, if he is of the opinion that it is in the public interest so to do, has an absolute right to retire any member of service who has attained the age of 50 years, by giving him notice of not less than three months or three months of pay and allowance in lieu of such notice”.

Further, Rule 22 (2) states:

“Whether a member of the judicial service should be retired in public interest under sub-rule (1) shall be considered atleast **three** times i.e. when he is about to attain the age of 50 years, 55 years and 58 years”.

The proviso further says that nothing contained in sub-rule (2) shall preclude consideration at any time other than that mentioned in the said sub-rule.

**(iii)** No specific provision in Judicial service rules for review at the age of 58 years or at earlier stages. However, the Civil service rules are invoked to consider if compulsory retirement in public interest has to be resorted to. Further, the review is also undertaken on the basis of Full Court resolution. Uttar Pradesh, Rajasthan, Bihar, Jharkhand, Karnataka fall under this category. In Karnataka, it appears that the review is being undertaken presently at the stage the Judicial Officer attains the age of 50 and 55 years.

In Bihar, the Bihar Superior Judicial Service Rules 1951 though under Rule 5A provides for age of retirement of Judicial Officers to be 60 years do not contain any provision for retirement in public interest. Rule 74 of Bihar Service Code governs the retirement in public interest and under clause (a) provides for retirement in public interest on completion of 21 years of duty and 25 years of total service and under clause (b)(i) and clause (b)(ii) provide for retirement in public interest on completion of 30 years of service or on attaining the age of 50 years.

In Uttar Pradesh also there is no provision for pre-mature retirement in U.P. Judicial Officers (Retirement on superannuation Rules), 1992. However, Fundamental Rule 56 (c) provides for pre-mature retirement on attaining the age of 50 years.

**13.** On taking stock of the rule position prevalent in various States, what then is the scenario that has emerged? The enabling provisions in the Civil Service Rules dealing with 'compulsory retirement' in public interest have been transplanted into the Judicial Service Rules so as to make intensive reviews at multiple stages starting from 50 years, a regular feature. In contrast, earlier, the review was confined to one stage only i.e. at the age of 58 years in conformity with the directive in AIJA-II (1993)/review judgment. In exceptional cases, however, the rule pertaining to compulsory/premature retirement provided for in the Rules governing civil services of the State were being invoked.

**13.1** As noticed earlier, the benefit of increased retirement age conferred by AIJA-I (1992) has become a short-lived one **and** with the passage of time, it

turned out to be a source of serious concern to Judicial Officers vis-à-vis their security of tenure. The observation in AIJA-II (1993)/review judgment that the resort to provisions for compulsory retirement as per the State Service Rules was permissible apart from the review at 58 years, has been taken to greater heights and perhaps to unintended dimensions. The rules in most of the States have been framed in such a way that the Judicial Officers have to cross the barrier at three stages (right from the age of 50 years) in order to continue in service. This is so in spite of the fact that the benefit of higher age of retirement exclusively for Judicial Officers has disappeared in the new millennium. In 1998, the Central Government enhanced the retirement age to 60 years. Thereafter, during the two decades following the year 2000, most of the States have enhanced the retirement age to 60 years. In two States viz. Madhya Pradesh and Chattisgarh, the retirement age is now 62 years for the Government servants. Only in few States, retirement age of Government servants is less than 60 years. For instance, in Kerala, it is 56 years, in Tamil Nadu, it is 59 years which has now been increased to 60 years vide G.O. (Ms) No.29 dated 25.02.2021, in Meghalaya, Sikkim, Punjab and Haryana, it is 58 years. In the Union Territory of Chandigarh also, the age of retirement is 58 years because under Rule 11 of Punjab, Haryana, UT Chandigarh (Subordinate Courts Establishment And Conditions of Service) Rules, 1997, the matters relating to leave, pension etc. of a member of service are governed by such rules and regulations as framed by the State Government and the UT of Chandigarh follows the rule of Punjab State where the age of retirement is 58 years. In the State of Telangana, at present, it is 58 years though as per the recent report of Pay Revision Commission,

there is likelihood of increase to 60 years in the near future. While so, the evaluation and review process then considered to be a necessary pre-condition for conferring the benefit of continuance upto the age of 60 years has now led to series of reviews at three stages by virtue of the Rules promulgated by various States at the instance of High Courts, thereby opening doors for service hazards which is not conducive to the work environment and security of tenure.

**14.** In the early stages i.e., after 1993, the High Courts were only resorting to the power of weeding out the unfit Judicial Officers on a thorough review before they complete the age of 58 years. The provisions related to premature retirement in public interest provided for in Civil Service Rules were being resorted to sparingly in exceptional cases. But, now, the exception has become a rule and the reviews are undertaken right from the time the Judicial Officer attains the age of 50 years. It is one thing to say that the power is available to the High Court to invoke the Rules providing for compulsory/premature retirement in public interest in appropriate cases, but it is another thing to say that it is mandatory to undertake review at three stages starting from 50 years. In 6 or 7 States, there is even an express provision that the review shall be undertaken **atleast three times** before they step into 59<sup>th</sup> year.

**15.** The emerging scenario as regards retirement age is somewhat disturbing. The benefit of extended superannuation age has now lost its meaning, with the age raised to 60 years from 1998 onwards yet, the rider prescribed by the Hon'ble Court in the AIJA-II (1993)/review judgment for giving the benefit of

enhanced superannuation age has assumed enormous proportions. The benefit ceased, but the Judicial Officers are faced with the hassles caused by repeated reviews. The new regime of Rules/or amendments to Rules framed from 2003 onwards have an undoubted impact on the security of tenure which is one of the recognized norms of judicial independence. The general observations made in certain decisions have been faithfully followed by the High Courts/States and multi-stage reviews to assess the continued utility of Judicial Officers are being undertaken by most of the High Courts, the starting point being 50 years or the completion of specified years of service (ranging from 10 years to 25 years).

**16.** As said earlier, certain general observations made by the Supreme Court has perhaps led to this situation as the rules were framed in conformity with such observations. For instance, in *Nawal Singh v State of Uttar Pradesh*, (2003) 8 SCC 117, the following observations are made towards the end of Judgment –

“It is to be reiterated that for keeping the stream of justice unpolluted, **repeated scrutiny of service records** of Judicial Officers after specified age/completion of specified years of service provided under the Rules is must by each and every High Court as the lower judiciary is the foundation of judicial system. We hope that the High Courts would take appropriate steps regularly for weeding out the deadwood or the persons polluting justice delivery system”

(emphasis supplied).

These observations were approvingly quoted in *Rajendra Singh Verma v LT. Governor (NCT of Delhi)*, (2011) 10 SCC 1 at paragraph 45.

**16.1 Further**, the then Hon’ble Chief Justice of India, by a letter dated 14.10.2008 addressed to the Chief Justices of High Courts, having referred to Rule 56 (j) of the Fundamental Rules of Government of India ‘recommended’ that the

review on the lines of the provisions contained in Rule 56(j) of Fundamental Rules be carried out firstly when the Judicial Officers attain the age of 50 years and then when they attain the age of 55 years. This would be in addition to the assessment being carried out at the age of 58 years in terms of the direction of the Supreme Court in AIJA-II (1993)/review judgment. Then, it was observed that the service rules can be suitably amended to provide for such assessment. "If implemented in right earnest", it was observed, such a provision will keep deviant behaviour in check, besides getting rid of those who are found to be indolent, ineffective or of doubtful integrity. Further, the Hon'ble Chief Justice of India referred to the practice being adopted in respect of officers and employees of Supreme Court of India where review was being carried out at 5 or 6 stages and further observed that "it has proved to be effective". This letter has apparently given impetus to the idea of widely resorting to the provision for premature retirement in public interest and to carry out frequent reviews for this purpose. The Chief Justice of India wanted the High Courts to keep him informed of the decision taken by the High Courts in the matter.

**16.2** With great respect, we would like to say that the practice prevailing in the Supreme Court in respect of the officials of Supreme Court shall not be considered to be an appropriate yardstick while dealing with the Judicial Officers exercising sovereign powers of the State. Further, it is based on an assumption that by carrying out such exercise, good results were achieved in the Supreme Court. In making the observations quoted above, the cardinal principle of security of tenure which is an attribute of judicial independence has not been apparently

kept in view. Further, it goes against the spirit of Judgment in AIJA-I (1992) case reflected in various observations made therein. Obviously, the letter addressed by the Hon'ble Chief Justice of India has been acted upon without reservations. The reference to this letter was made by some High Courts while initiating the proposal for rule-making or devising the procedure.

**17.** Frequent and intensive performance reviews starting from 50 years of age to consider whether the Judicial Officer should be retained in service thereafter has thus become the norm except in few states. It was perhaps not intended in AIJA-II (1993)/review judgment that in course of time, the rider will assume greater importance than the specifically ordained review at the age of 58 years.

**18.** Periodical intensive reviews covering all the members of Judicial service in order to decide whether public interest retirement ought to be resorted to is a serious task and involves lot of administrative work for the Judges of High Courts who are already overburdened with other responsibilities, apart from the judicial work. Further, it is a known fact that the updating of performance appraisals and the preparation of Annual Confidential Reports (ACRs) is getting unduly delayed and the Judges are not in a position to bestow sufficient time for this purpose. This aspect should also be kept in view to decide whether the present practice of reviews being undertaken at three stages should remain as at present.

**19.** Time has come to have a re-look at the subject of premature retirement especially in view of the subsequent event of enhanced retirement age of 60 years for Government servants both under the employment of Central Government as well as the State Governments (excepting few States) and also to



evolve uniformity throughout the country in this regard. Too many spells of performance review ought to be abandoned and the cardinal principle of security of tenure ought to be given due weightage. The rule evolved in AIJA-II (1993)/review judgment as an ad-hoc measure in the background of the then existing retirement age has to be properly modulated. The review at 50 years and 55 years shall not be treated as compulsive, but the provision shall be viewed as conferring enabling power. Multiple compulsory reviews starting from the age of 50 years as laid down in most of the rules now in force, shall be eschewed and the provision should be made more rational. A balanced approach is called for, so that the judicially conferred benefit at one point of time shall not turn out to be detrimental to the service conditions of Judicial Officers. Further, the premature retirement in public interest shall not be viewed as a substitute or short-cut to disciplinary action. With these broad objectives in view and on perceiving the need to adopt a balanced approach, the Commission is formulating its recommendations accordingly.

**20. Recommendations:**

**20.1** The review of performance and the assessment as regards the continued utility of the Judicial Officers to serve shall be confined to the point of time when the Judicial Officers is about to attain the age of 58 years. In other words, the position that prevailed for a decade or more pursuant to the law laid down in AIJA-II (1993)/review judgment can remain. We are reiterating this principle for the reason that higher personal and professional standards are expected from the Judges who discharge the sovereign functions of the State. The

second reason why we are reiterating this procedure is that by this time, everyone has got reconciled to the comprehensive review at the age of 58 years and this can act as a sufficient safeguard for ensuring better accountability without unduly impinging on the principle of security of tenure. At the same time, the premature retirement in public interest on the ground that the Judicial Officer is unfit to continue upto 60 years can remain in a limited way by confining the same to the Judicial Officers who are about to cross or crossed 55 years. Moreover, the existence of such power shall only be viewed as an enabling provision to be exercised sparingly in appropriate cases. In other words, the intensive review of performance of all the Judicial Officers at the stage prior to 58 years shall cease to be a regular feature. The provision for premature retirement in public interest needs to be viewed as a source of power which can be exercised in appropriate cases. In any case, it ought not to be viewed as a substitute for disciplinary action for specific acts of misconduct or dereliction of duties.

**20.2** As stated earlier, in some States, the power of 'compulsory' retirement in public interest is reserved to the appointing authority on the completion of prescribed number of years of service. The period varies between 10 years and 25 years. In Madhya Pradesh, it is as short as 10 years. In Punjab, Haryana and Rajasthan, it is 15 years. The Commission is of the view that such rule wherever it exists, shall be dispensed with in respect of Judicial Officers.

**20.3** The Commission is suggesting the draft rules for the consideration of High Courts as follows:

Superannuation Age:

**a)** Every member of the service shall ordinarily retire from service on the afternoon of the last day of the month in which s(he) attains the age of sixty years, provided however that her/his continuance in service beyond the age of 58 years shall be subject to the process of review and assessment by the High Court as to the suitability and utility of the member to continue to serve till s(he) attains the age of 60 years.

**b)** If on such review and assessment, the High Court is of the opinion that a member of service is unfit to be continued beyond the age of 58 years, the appointing authority, on receiving the recommendation of the High Court, order retirement on completion of the age of 58 years by following the procedure for premature/compulsory retirement in public interest under the relevant Rules.

**c)** Notwithstanding the preceding rule, the High Court may, if it is of the opinion that in the public interest, a Judicial officer (or/the member of judicial service) who has attained the age of 55 years and is below 58 years has to be retired, send the recommendation to the Governor/appropriate authority for passing necessary orders after observing the rules in force governing compulsory/premature retirement.

**20.4** As regards the members of Judicial service in **Madhya Pradesh & Chhattisgarh**, the review for the purpose of judging the fitness of the Judicial officer to continue till the normal age of retirement shall be at the age of 60 years, not 58 years, if the recommendation of Commission to enhance their retirement age to 62 years as contained in Chapter-II, para 6 page no.80 of this part of the Report, is accepted by the Hon'ble Court. However, public interest retirement, if it is warranted, can be resorted to when the Judicial Officer attains the age of 55 years.

**21.** The data regarding the premature retirements of Judicial Officers during the last ten years to the extent it is available with the Commission is furnished in **Annexure-III**.

## **ANNEXURE-I**

### **STATE-WISE RULES**

**We shall refer to the Provisions/Rules which are in force in the States to have a clear idea of the reviews being undertaken before the normal retirement age of 60 years (vide paragraph 11 of this Chapter).**

#### **JAMMU & KASHMIR (UT):**

Jammu & Kashmir Higher Judicial Service Rules, 2009 provides for review of performance at three stages. The relevant Rules 21 and 24 are extracted below:

"21. *Age of superannuation* – A member of the service shall retire from service in the afternoon of the last day of the month in which he attains the age of sixty years."

"24. *Premature retirement* – The High Court shall assess and evaluate the record of the members of the service for his/her continued utility before he/she attains the age of 50 years, 55 years and 58 years by following the procedure for compulsory retirement under the Service Rules applicable to him/her and if he/she is not found fit and eligible, he/she will compulsorily retire on his/her attaining the age of 50 years, 55 years and 58 years, as the case may be."

#### **HIMACHAL PRADESH:**

Rule 14 of Himachal Pradesh Judicial Service Rules 2004 provides that the age of superannuation of a member of the service shall be 60 years. The proviso states that before the completion of 58 years, the service record of the officer will be evaluated and his potential and fitness for being retained in service up to the age of 60 years shall be determined and in case he is not found suitable and fit, he shall be compulsorily retired at the age of 58 years.

Rule 15 of Himachal Pradesh service Rules, 2004 provides for compulsory retirement in public interest at the age of 50 years, 55 years and 58 years and it reads as under:

"1) Notwithstanding anything contained in these rules, the Governor shall on the recommendations of the High Court, if he is of the opinion that it is in the public interest to do so, have the absolute right to retire any member of the service who has attained the age of fifty years, by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

2) Whether a member of the service should be retired in public interest under sub-rule (1) shall be considered at least three times, that is, when he is about to attain the age of 50 years, 55 years and 58 years.

Provided that nothing in sub-rule (2) shall be construed as preventing the consideration of question of retirement of member of the service in the public interest at any time other than those mentioned therein."

3) ....

4) ....

## **PUNJAB:**

Rule 20 of the Punjab Superior Judicial Service Rules, 2007 and Part-FF of Punjab Civil Services (Judicial Branch) Rules are the relevant Rules.

"20. Superannuation of members of the Service: A Member of the Service shall retire from the Service in the afternoon of the last day of the month in which he attains the **age of sixty years**:

Provided....

Provided further that the High Court shall assess and evaluate the service record of a member of the Service at the age of fifty years, fifty-five years and before he attains the age of fifty-eight years to find his continued utility in the service by following the procedure for compulsory retirement under the service rules applicable to him before he is allowed to continue beyond the age of fifty-eight years:

Provided further that the High Court in public interest may recommend **premature retirement of an officer on completion of fifteen years of Service or at any time thereafter** subject to the condition that in the event of such retirement, the officer shall be entitled to the benefit of pension and other retiral benefits proportionately as admissible, having regard to the qualifying Service rendered by him as per Government policy."

Part FF of the Punjab Civil Service Judicial Branch Rules, 1951 is also worded in the same language as Rule 20 quoted above.

It appears the 2<sup>nd</sup> proviso is defectively worded. Either the words "at the age of fifty years, fifty five years and" have to be deleted or the words "beyond the age of fifty eight years" occurring in the last portion shall be substituted by the words "beyond the age of fifty, fifty five or fifty eight years, as the case may be". As the rule stands, there is an ambiguity.

#### **HARYANA:**

The Rules in Haryana are identical to the rules in the State of Punjab. Rule 24 of Haryana Superior Judicial Services Rules, 2007 declares that the member of the service shall retire when he attains the age of 60 years. The first proviso thereto enjoins that the High Court shall assess and evaluate the service record of a member of the service at the age of 50 years, 55 years and before he attains the age of 58 years to find his continued utility in the service by following the procedure for compulsory retirement under the applicable Service rules before he is allowed to continue beyond the age of 58 years. The 2<sup>nd</sup> proviso further lays down that the High Court may, in public interest, recommend premature retirement of a member of service on completion of 15 years of service or at any time thereafter and in the event of such retirement, the benefit of pension and other retiral benefits will be available.

For Judicial Officers of Haryana other than those governed by Superior Judicial Service Rules, the same rules of retirement/premature

retirement as contained in Part-H of Punjab Civil Services (Judicial Branch) Rules, 1951 has been made applicable. The relevant rule is similar to the above quoted rule of Haryana Superior Judicial Service Rules.

Further, in Rule 144 of Haryana Civil Services (General) Rules, 2016 dealing with premature retirement, there is a proviso which states that in the case of Judicial Officer, the case for retention in service beyond 58 years shall be considered by the competent authority, irrespective of his date of entry into Government service.

**NCT OF DELHI:**

Rule 26-B incorporated in the Delhi Higher Judicial Service Rules, 1970 w.e.f. 22.10.2008 by way of amendment to the earlier Rule deals with the age of superannuation. According to the said rule, a member of the service shall retire on the last day of the month in which he attains the age of 60 years.

The Proviso reads thus:

“Provided that the High Court shall assess and evaluate the service record of the member of a service for his continued utility well within the time before he attains the age of 58 years by following the procedure for compulsory retirement under the service rules applicable to him before he is allowed to continue beyond the age of 58 years”.

Rule 31-A of Delhi Judicial Service Rules, 1970 which came into force w.e.f. 15.04.2013 is similar to Rule 26-B of DHJS Rules.

These Rules in Delhi are in accordance with the directive in AIJA-II (1993)/review judgment. Review at earlier stages (starting from 50 years) is not undertaken in Delhi.



At the same time, the premature retirement in public interest as provided for in Fundamental Rule 56(j) framed by the Central Government which is in operation in NCT of Delhi can be invoked in relation to the members of Judicial Service as well, if considered necessary.

As regards the Delhi rule quoted above, we would like to point out that the phraseology in the proviso to Rule 26-B – “by following the procedure for compulsory retirement under Service Rules” occurring after the words “before he attains the age of 58 years” seems to be inappropriate and the proper wording of the proviso should have been as follows: - “provided that the High Court shall assess and evaluate the service record of the member of the service for his continued utility well within the time before he attains the age of 58 years and if he is not fit to be continued, he shall be retired at the age of 58 years by following the procedure for compulsory retirement under the Service Rules.” The question of following the procedure for compulsory retirement for the purpose of assessment and evaluation as a part of decision-making does not arise. Once the decision is taken that he is not fit to be continued, then he shall be retired compulsorily/pre-maturely at the age of 58 years by following the procedure for compulsory retirement such as giving 3 months notice or pay equal to 3 months in lieu of such notice. Apparently, this language has been borrowed from the observation in the Judgment in AIJA-II (1993)/review judgment at para 31 quoted earlier. However, the following sentence in paragraph 33 of the same Judgment is appropriately worded: “and if found unfit, **they should be retired compulsorily according to the procedure for**

**compulsory retirement** under the Rules". Therefore, the rule needs some recasting, as indicated above. We find this inappropriate wording in Maharashtra, Punjab, Haryana and J&K Judicial Service Rules too.

#### **UTTAR PRADESH:**

Rule 4 of U.P. Judicial Officers (Retirement on Superannuation) Rules specifies the superannuation age of Judicial Officers as 60 years. There is no specific provision regarding review at the age of 58 or at an earlier stage in order to decide whether (s)he shall be continued upto 60 years. However, in view of Rule 34 of U.P. Judicial Service Rules, 2001 and Rule 34 of U.P. Higher Judicial Service Rules 1975, where the said rules are silent, the rules and regulations applicable to Government Servants of U.P. are attracted. Rule 56 (a) of Uttar Pradesh Fundamental Rules provides that every Government servant shall retire from service on the date of the month in which he attains the age of 60 years. Sub-rule (c) of Rule 56 read with the Explanation lays down that notwithstanding anything contained in clause (a), the appointing authority without assigning any reason, may require the Government servant to retire after he attains the age of 50 years by giving notice of 3 months, if such retirement is considered necessary in the public interest. It appears that this Rule is now being applied for prematurely retiring Judicial officers after necessary review and evaluation. Rule 56 (2) lays down certain factors to be taken into account for reaching a decision whether it will be in the public interest to require a Government servant to retire. According to the information

furnished by the Registrar General of High Court of Allahabad, there is no other specific provision for retirement at the age of 58 years, on a review of the record of service of Judicial officers.

#### **UTTARAKHAND:**

Rule 25-A of Uttarakhand Higher Judicial Service (introduced by way of amendment made on 20.02.2016) provides that an officer borne in the service who has attained the age of 50 years, 55 years and 58 years may be compulsorily retired in public interest by giving him notice of 3 months or 3 months pay and allowance in lieu of such notice, if the High Court on an assessment and evaluation of the record of such officer is of the view that such officer is not fit and eligible to continue beyond the age of 50 years, 55 years and 58 years, as the case may be. Sub-rule (ii) further says: "Whether a member of the service should be retired in public interest under sub-rule (i) shall be considered **atleast** three times, that is, when he is about to attain the age of 50 years, 55 years and 58 years.

#### **RAJASTHAN:**

There is no provision in Rajasthan Judicial Service Rules, 2010 regarding the retirement age and review at the age of 58 years as per the information received from the Registrar General of the High Court. The retirement age is 60 years under the State Government rules and the same is being applied to Judicial Officers. It is not clear whether the review at the age of 58 is being undertaken in order to consider the fitness of the Judicial Officer to

be continued beyond 58 years. However, Rajasthan Civil Services Pension Rules, 1996 provide for compulsory retirement on completion of 15 years qualifying service or on attaining the age of 50 years whichever is earlier, if the appointing authority is satisfied that a Government servant, on account of indolence or doubtful integrity or incompetence has lost his utility, may require him to retire in public interest after following due procedure. It appears that this rule is being invoked by the High Court as and when required.

### **MADHYA PRADESH:**

In Madhya Pradesh, the age of superannuation has been raised to 62 years for the Government servants by amending FR-56 w.e.f 31.03.2018. For the Judicial Officers, the age of retirement continues to be 60 years. In Madhya Pradesh, the relevant Rule now in force is Rule 14 of **M.P. Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2017.**

Rule 14 (1) (a) states that subject to provisions of sub-rule (2) and (3), a member of service shall retire on the last day of the month in which he attains age of 60 years provided he is found fit and suitable to continue after 58 years in service by the High Court. Sub-rule (b) of Rule 14 (1) provides that "without prejudice to the provisions contained in sub-rule (2), a member of service not found fit and suitable shall be compulsorily retired on his attaining the age of 58." Sub-rule (2) of Rule 14 lays down that notwithstanding anything to the contrary contained in the rules, a member of the service may, in public interest, be retired after he has completed 10 years of service or on attaining the age of 50 years whichever is earlier. Sub-rule (3) states that for the purpose

of sub-rule (1) and sub-rule (2), the Chief Justice may constitute a Screening Committee for 'scrutiny and assessment of such member of service based on his past record of service..... and utility to service etc."

Thus, right from the date of completion of 10 years of service, a member of Higher Judicial Service can be retired in public interest.

Rule 11 of Madhya Pradesh Judicial Services (Revision of Pay, Pension and other Retirement Benefits) Rules, 2019 provides that the age of superannuation of the member of service shall be 60 years. The other Provisions regarding premature retirement are similar to M.P. Higher Judicial Service Rules.

Rule 42 of Madhya Pradesh Civil Services (Pension) Rules provides for retirement of a Government servant on completion of 20 years of qualifying service or after he attains the age of 50 years, whichever is earlier in public interest.

#### **BIHAR:**

According to Rule 5-A of Bihar Superior Judicial Service Rules, introduced in December 2005, the age of retirement of the members of this cadre shall be 60 years. There is no specific provision for evaluation of the officer's performance when s(he) is about to attain 58 years. However, compulsory/premature retirement in public interest can be resorted to by applying Rule 74 of Bihar Service Code and review of their service record is undertaken for this purpose. This can be done on completion of 30 years of

qualifying service or on attaining 50 years of age or on any day thereafter as specified in the notice. However, there is no specific information whether intensive scrutiny for the purpose of assessing the continued utility of the officer at any particular stage (such as 58) is being undertaken or Rule 74 is being resorted to as an enabling provision in appropriate cases.

**JHARKHAND:**

According to the information received from the Registrar General, in the State of Jharkhand, there is no specific rule in the Judicial Service Rules dealing with retirement age and review at the age of 58 years. However, pursuant to the letter dated 14.10.2008 of the Hon'ble Chief Justice of India, evaluation of Judicial Officers on the basis of their past record of service etc is undertaken before they attain the age of 50, 55 and 58 years by the Screening Committee and after approval of Full Court, the recommendation for retirement is sent to the State Government. As per Rule 74 (b) (ii) of the Jharkhand Service Code, a Government servant who had completed 30 years of qualifying service or attained the age of 50 years age or on any date thereafter, can be retired from service in public interest after giving three months' previous notice or amount equal to three months' pay and allowances in lieu of such notice.

**ANDHRA PRADESH/TELANGANA:**

In the present State of Andhra Pradesh, the retirement age of Government servants has been 60 years since 2014. In the State of Telangana, presently, the retirement age of Government servants is 58. However, in view of

the recent recommendation of Pay Revision Commission, the retirement age is likely to be stepped up to 60 years.

In these States, the age of superannuation is governed by the enactment titled as 'The Andhra Pradesh/Telangana Public Employment (Regulation of age of superannuation) Act, 1984. The Andhra Pradesh Act has been adapted by the Telangana State by Telangana Adaptation of Laws Order, 2016. Accordingly, Telangana Public Employment (Regulation of Age of Superannuation) Act, 1984 is in force.

In the year 1998, sub-section (1A) was introduced, which provided for retirement age of the Judicial Officers. While enacting that every member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service shall retire from service on the last date of the month in which he attains the age of 60 years, it was laid down in the 1<sup>st</sup> proviso that any such member of judicial service may be compulsorily retired on the last date of the month in which he attains the age of 58, if he is not found fit and eligible to be continued in service by the High Court on assessment and evaluation of the record of such member for his continued utility well within the time before he attains the age of 58 years by following the procedure for compulsory retirement.

While so, sub-section (1A) was amended by Andhra Pradesh Act No.42/2006 by adding/substituting the provisos thereto. After the amendment, sub-section (1A) with its two provisos (the 3<sup>rd</sup> proviso not relevant here) reads as follows:

“(1A) Notwithstanding anything contained in sub-section (1), every member of the Andhra Pradesh State Higher Judicial Service or Andhra Pradesh State Judicial Service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years;

Provided that any such member of Andhra Pradesh State Higher Judicial Service or Andhra Pradesh State Judicial Service may be compulsorily retired from service on the afternoon of the last day of the month in which he attains the age of fifty years or fifty five years or fifty eight years or thirty three years of qualifying service, if he is found not fit and eligible to be continued in service by the High Court of Andhra Pradesh, on an assessment and evaluation of the record of such member for his continued utility, well within time, before he attains the age of fifty years or fifty five years or fifty eight years or thirty three years of qualifying service.

Provided further that any member of service after after giving three months notice in writing or three months of pay and allowances in lieu of notice may be required to retire in public interest from service on the date on which such member attains the age of fifty years or fifty five years or fifty eight years or thirty three years of qualifying service or any date thereafter to be specified in the notice.”

The 1<sup>st</sup> proviso, it may be seen, is specific to the Judicial officers. Further, Rule 23 of A.P. Judicial Service Rules of 2007 and Rule 23 of Telangana Judicial Service Rules of 2007 deal with retirement in public interest. They are on the same lines as the amendment brought about by A.P. Act 42 of 2006.

Thus, a three-tier review before the completion of the age of 50, 55 and 58 has been laid down for the Judicial Officers under the 1<sup>st</sup> proviso.

The above proviso added by Act No.42/2006 was struck down by a Full Bench of the then Andhra Pradesh High Court in the case of *K. Veera Chary v High Court of Andhra Pradesh* vide 2008 (5) ALT 115 as being violative of Articles 14 and 311 (2) of the Constitution. The Full Bench held that the impugned 1<sup>st</sup> proviso insofar as it enables the Government to compulsorily retire a member of Judicial service on his attaining the age of 50 years or 55 years



was constitutionally invalid. On merits too, the compulsory retirement orders were held to be illegal. The matter was carried in appeal to the Supreme Court by the High Court of Andhra Pradesh. The Supreme Court, by the order dated 29.11.2017 in Civil Appeal No. 9700/2013 reversed the order of the Full Bench of the High Court. The Order reads thus:

“We are satisfied that there is no basis for declaring the first proviso to Section 3 (1A) of Andhra Pradesh Public Employment (Regulation of age of superannuation) Act 1984 as amended by Andhra Pradesh Act No. 42 of 2006 to be void. The said provisions are held to be intra vires.

The orders of compulsory retirement of the Respondent did not call for any interference and the same are restored.....”

There was no other discussion in the Judgment of the Hon’ble Supreme Court.

Therefore, both the High Courts of Andhra Pradesh and Telangana are undertaking review at the age of 50, 55 and 58 years.

**KARNATAKA:**

In the State of Karnataka, as per Rule 95A of Karnataka Civil Service Rules, the age of retirement of Government servant including Judicial officers was raised from 58 to 60 years w.e.f. 17.07.2008. There is no specific rule for review/assessment of the work and conduct of the Judicial Officer before s(he) attains the age of 58 in order to take a decision as to continuance up to 60 years. However, according to information received from the Registrar- General of the High Court of Karnataka, presently, the review is undertaken in terms of

Rule 285 (4) of the Karnataka State Civil Service Rules which deals with retirement of a Government servant in public interest. Rule 285 (4) enables the Government to retire a Government servant after he has attained the age of 58 years or after he has completed 20 years of qualifying service, if the retirement is in its opinion, necessary in the public interest, after giving three months notice or a sum equivalent to three months' salary. In terms of this Rule and pursuant to the Notification dated 28.09.2005 issued by the High Court, it appears, the Karnataka High Court is presently undertaking review at two stages i.e. at the age of 50 years and 55 years and sending its recommendation to the Government. In that Notification, it is stated that the Committee of Judges constituted for screening of Judicial Officers at the age of 58, will also undertake review at the age of 50/55 years. However, it is not clear whether the practice of undertaking review before the Judicial Officer attains 58 years of age is being continued.

**TAMIL NADU:**

In the State of Tamil Nadu, Rule 56 of the Fundamental Rules framed by the State Government deals with retirement on superannuation. The age of superannuation of Government servant in the superior service is the last date of the month in which he attains age of 59 years w.e.f. 01.06.2020. Now it has been further increased to 60 years vide G.O. (Ms) No.29 dated 25.02.2021. As regards the Judicial officers, there is a proviso to FR 56(1) which lays down that on and from 01.01.1993, the Judicial Officers at various levels from District Munsif-cum-Judicial Magistrate to District Judge shall retire from service on

attaining the age of 60 years subject to formation of opinion by the High Court of Madras that the Judicial Officer has potential for continued useful service beyond the age of 59.<sup>3</sup> Rule 56 (2) of the Fundamental Rules lays down that notwithstanding anything contained in Rule 56, the appropriate authority shall have the absolute right to retire any Government servant by giving him notice of not less than 3 months or 3 months pay and allowances in lieu of such notice at any time after he has attained the age of 50 years or 55 years or after he has completed 30 years of qualifying service, provided that the appropriate authority is of the opinion that it is in the public interest to do so. Further, based on the suggestion of the Chief Justice of India in the letter dated 14.10.2008, the Full Court, by the Resolution dated 18.03.2009 decided that even without the amendment of the rule, it will be open to the High Court to undertake regular review and evaluation after completion of 50 years, 55 years and 58 years for continuance or otherwise of the Judicial Officer concerned.

**PUDUCHERRY (UT):**

According to Rule 16 of Puducherry Judicial Services (Cadre and Recruitment) Rules 2008, the member of service shall retire on the last day of the month on which s(he) completes the age of 60 years. However, as per the information received from the Registrar General, the Madras High Court Resolve on 28.10.1993 to adopt certain norms and guidelines in order to decide whether the Judicial Officer should continue in service beyond the age of

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<sup>3</sup> As per the amendment introduced on 01.06.2020, the retirement age of State Government servants was enhanced to 59 and by G.O. (Ms) No. 29 dated 25.02.2021 it has been further enhanced to 60 years. However, the proviso to FR 56(1) in respect of Judicial Officers has not yet been amended.

58 years and up to 60 years or he should be retired on attaining the age of 58 years. Rule 56(j) of the Fundamental Rules applicable to the Government servants of Union of India dealing with retirement in public interest is applicable and the recourse to such provision is being taken as and when required. Further, the Full Court Resolution of Madras High Court dated 18.03.2009 regarding regular review and evaluation at various stages seems to apply to Puducherry also.

**KERALA:**

Kerala Civil Service Rules Part-I deals with 'Compulsory Retirement'. Rule 60 (aa) (which came into force on 31.12.1992) declared that a Judicial officer shall ordinarily retire when he attains the age of 60 years and his continuance in service beyond the age of 58 years shall be subject to review by the High Court as per the provisions of Kerala Judicial Service Rules and the Kerala State Higher Judicial Service Rules. The retirement in public interest is provided for in Rule 56-A of Kerala Civil Service Rules, Part-III.

More drastic provisions in relation to Judicial officers were introduced in 2006 and 2008. A special provision regarding compulsory retirement in public interest is provided for by Rule 13A of Kerala Judicial Service Rules in the year 2006. It reads thus:

- (1) Notwithstanding anything contained in these rules and without prejudice to the generality of the provisions contained in the Kerala Service Rules, an Officer borne in the service who has attained the age of 50 years, 55 years or 58 years respectively may compulsorily be retired in public interest by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice, if the High Court on an assessment and evaluation of

the records of such officer is of the view that such officer is not fit and eligible to continue in service beyond the age of 50 years, 55 years and 58 years, as the case may be.

(2) Whether a member of the service should be retired in public interest under sub-rule (1) above shall be considered **at least three times**, that is, when he/ she is about to attain the age of 50 years, 55 and 58 years:

Provided that nothing in sub-rule (2) shall be construed as preventing consideration of premature retirement of a member of the Service at any time other than those mentioned therein."

Similar amendment was made in 2008 to the Kerala State Higher Judicial Service Rules by introducing Rule 7-A.

#### **MAHARASHTRA:**

In Maharashtra, Rules 17 and 19 of Maharashtra Judicial Service Rules of 2008 as amended on 11.02.2016 are the relevant Rules. The Rules read thus –

17. *Age of Superannuation* – Every member of the Judicial Service shall retire by Superannuation on the afternoon of the last day of the month in which he attains the age of 60 years, subject to clearance by Special Review Committee constituted by the Chief Justice of High Court for the purpose which Committee shall review the cases of all Judicial Officers by following the procedure prescribed for compulsory retirement under the Maharashtra Civil Service Rules applicable to them, on their attaining the age of 58 years.

Provided....

Provided...

19. *Retirement in public interest* – (1) Notwithstanding anything contained in these Rules the Governor shall, on the recommendation of the High Court, if he is of the opinion that it is in the Public Interest so to do, have the absolute right to retire any member of the service when he attains the age of 50 years, 55 years or 58 years by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

(2) Whether a member of the service should be retired in the public interest under sub-rule (1) shall be considered at least three times, that is, when he is about to attain the age of 50 years, 55 years and 58 years.

Provided that nothing in this Rule shall be construed as preventing consideration of a member of the service again at any time after attaining the age of 50 years or 55 years or 58 years, as the case may be, for the purpose of retiring him in the public interest despite such member was considered earlier as per sub-rule (2).

Further, Rule 10 (4) of Maharashtra Civil Service (Pension) Rules provides for retirement in public interest on completion of 50 or 55 years, as the case may be.

**GOA:**

Rule 16 of Goa Judicial Service Rules, 2013 ordains that the age of superannuation of Judicial Officer is 60 years subject to clearance by Special Review Committee constituted by the Chief Justice for review of cases of all Judicial Officers before they attain the age of 58 years. Then, Rule 18 provides for compulsory retirement in the public interest when they attain the age of 50/55/58 years based on the recommendation of the High Court notwithstanding anything contained in the other rules. Moreover, sub-rule (2) of Rule 18 makes it explicit that there shall be consideration for this purpose atleast 3 times i.e., when he is about to attain the age of 50, 55 and 58 years. Thus, a 3-stage review is contemplated by the rules as in Maharashtra.

## **GUJARAT:**

Rule 22 (1) of **Gujarat State Judicial Services Rules 2005**, while declaring the age of superannuation of a member of the service as 60 years, qualifies the same by laying down:

“Notwithstanding anything contained in these rules, the Governor shall, on the recommendation of the High Court, if he is of the opinion that it is in the public interest so to do, has an absolute right to retire any member of service who has attained the age of 50 years, by giving him notice of not less than three months or three months of pay and allowance in lieu of such notice”.

Further, Rule 22 (2) states in explicit terms:

“Whether a member of the judicial service should be retired in public interest under sub-rule (1) shall be considered atleast **three** times i.e. when he is about to attain the age of 50 years, 55 years and 58 years”.

The proviso further says that nothing contained in sub-rule (2) shall preclude consideration at any time other than that mentioned in the said sub-rule.

## **ODISHA:**

By the Odisha Service Code (Amendment) Rules 1995, sub-rule (a-1) was added to Rule 71 by which it was provided that notwithstanding anything contained in sub-rule (a) of Rule 71, a Judicial Officer belonging to State Judicial Service, who, in the opinion of the High Court of Orissa have potential for continued useful service can be retained in service up to the age of 60 years. In Odisha State Superior Judicial Service and Odisha Judicial Service Rules, 2007, Rule 42 declares that the age of superannuation of the officer of the service shall be 60 years. Rule 44 which deals with retirement in public interest says:

“Notwithstanding anything contained in these rules, the Governor shall, in consultation with the High Court of Orissa, if he is of the opinion that it is in the public interest so to do, have absolute right to retire any member of the service who has attained the age of 50 years by giving him/her notice of not less than three months or three months’ pay and allowances in lieu of such notice.”

Sub-rule (2) of Rule 42 further says:

“Whether any officer of the service should be retired in public interest under sub-rule (1) shall be considered **atleast** three times, that is, when the officer is about to attain the age of 50 years, 55 years and 58 years”.

### **CHHATTISGARH:**

As per Rule 13 (1) of **Chhattisgarh Higher Judicial Service Rules, 2006** as amended in November 2010, a member of the Service retires on the last day of the month in which he attains the age of 60 years. This is subject to sub-rule (2) which says that a member of service may be retired in public interest after he has completed 20 years of qualifying service or attained the age of 50 years whichever is earlier, without assigning any reason. Sub-rule (2) lays down that a Screening Committee shall be constituted by the Chief Justice for the scrutiny and assessment based on the past record of service. The Commission does not have the information whether the scrutiny/review is being undertaken in regular course at a particular stage i.e. in respect of all the officers who have completed the prescribed number of years of service or attain the specified age.

### **WEST BENGAL:**

In the State of West Bengal, Rule 34 of the W.B. Judicial (Conditions of Service) Rules, 2004 deals with ‘compulsory retirement’. The



original rule was substituted by the rules now in force as per the Notification issued by the Government of West Bengal on 26.08.2019. The amended rule lays down that the High Court, Calcutta shall evaluate the potential of all members and assess their performance on the basis of past records of service, character rolls, quality of Judgments and other relevant material immediately before the member of W.B. Judicial Service (a) has completed 25 years of service or has attained the age of 50 years whichever is earlier (b) has attained the age of 55 years and (c) has attained the age of 58 years. Sub-rule (2) starts with a non-obstante provision and it provides that the appointing authority shall, on the recommendation of the High Court and if the High Court is of the opinion that it is in the public interest to do so, have the right to retire any member of W.B. Judicial Service who has completed 25 years of service or has attained the age of 58 years whichever is earlier or has attained the age of 55 years or has attained the age of 58 years on the ground that such member is unfit to continue in service on account of infirmity, incompetency or ineffectiveness or is lacking in integrity, after giving such member notice of not less than 3 months or 3 months pay and allowance in lieu of such notice. There is a proviso to the amended Rule 34 which says that a member of W.B. Judicial Service shall be deemed to be incompetent if he is graded 'poor' four times during the six years preceding the date of evaluation and assessment, unless a contrary opinion is expressed by the High Court. Rule 36 as amended in August 2019 declares that the age of superannuation of a member of W.B. Judicial Service shall, subject to the provisions of Rule 34, ordinarily be, 60 years.

## **ASSAM:**

In Assam Judicial Service Rules of 2003, as amended in 2016, Rule 19 deals with 'Retirement' and Rule 20 deals with "Retirement in public interest".

### 19. RETIREMENT

A. Except as otherwise provided in this Rule, every Judicial Officer shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years, provided that all Judicial Officers whose date of birth is the 1<sup>st</sup> day of a month shall retire from service on attaining th age of 58 years.

B. Notwithstanding anything contained in Clause A above, a Judicial Officer belonging to the Assam Judicial Service, who in the opinion of the High Court, have the potential to continue with his/her service, shall be retained in service upto 60 years.

I. The potential for continued utility shall be assessed and evaluated by appropriate Committee of Judges of the High Court, constituted and headed by the Chief Justice and the evaluation shall be made on the basis of the officer's past record of service, character roll, quality of judgments and other relevant matters.

II. The High Court should undertake and complete the exercise well within time, before the Officer attains the age of 58 years and take a decision whether the benefit of extended service is to be given to the officer or not.

III. ....

IV. In case the officer concerned is found not fit for retention beyond 58 years, the High Court may inform the officer that he would stand retired at the age of 58 years.

V. ....

Rule 20 deals with "Retirement in public interest'. It reads as follows:

### 20. RETIREMENT IN PUBLIC INTEREST

- (1) There shall be a committee consisting of three senior Judges headed by Chief Justice of the High Court to review the career progress and other attributes of all Judicial Officers.
- (2) This review will be undertaken when the concerned officer(s) attain the age of 50 and 55 years. If the committee considers that in public interest the officer should be retired from service, he shall be

compulsorily retired by giving him a notice of not less than 3 months in writing or 3 months pay and allowance in lieu thereof.

Provided that nothing in sub-rule (2) shall be considered as preventing consideration for compulsory retirement of a member of the service at any time other than those mentioned therein.

## **MEGHALAYA:**

Rule 20 of Meghalaya Higher Judicial Service Rules, 2015 lays down that every member of the service shall retire on the last date of the month in which he attains the age of 58 years, except as provided in this rule. Sub-rule (2) states that notwithstanding anything contained in sub-rule (1), if in the opinion of the High Court, any member has the potential to continue with his/her service, he/she shall be retained in service up to 60 years. Sub-rule (3) states that the potential for continued utility shall be assessed and evaluated by a Committee of Judges of the High Court, constituted by the Chief Justice. Sub-rule (4) states that the High Court should complete the exercise well within the time before the officer attains the age of 58 years and take a decision whether the benefit of extended service is to be given to the officer or not. Sub-rule (6) states that in case the officer concerned is not fit for retention beyond 58 years, he would stand retired at the age of 58 years. Further, sub-rule (7) states that an officer shall be deemed to have been denied the benefit of extension unless a specific order to that effect is passed and communicated. Almost a similar rule is there in Meghalaya Judicial Service Rules, 2006 (Rule 24). However, Rule 24 was amended in 2016 by providing that the retirement from service shall be on the last date of the month in which the Judicial Officer attains the age of 60

years (instead of 58 years) and it is not clear whether similar amendment prescribing normal retirement age of 60, subject to review at the age of 58, was introduced in Higher Judicial Service. Then, Rule 57-B of Meghalaya Fundamental Rules and Subsidiary Rules of 1984 provide for retirement of civil servants at the age of 58 years. However, as per sub-clause (b), the appropriate authority may, if he is of the opinion that it is in public interest to do so, retire a Government servant by giving him notice of 3 months or 3 months pay and allowance in lieu of such notice after he has attained 50 years or has completed 25 years service, whichever is earlier.

**MANIPUR :**

Sub-rule A of Rule 19 of Manipur Judicial Service Rules prescribes the age of retirement of Judicial Officer as 58 years. Sub-rule B provides that a Judicial Officer can be retained in service upto 60 years on the basis of assessment of continued utility to serve. Further, under Rule 20 (2) of the said Rules, the review has to be undertaken at the age of 50 years and 55 years for deciding whether the Judicial Officer shall be prematurely retired in public interest. The provision for premature retirement contained in Central Government Service rules is being applied in this context.

**MIZORAM :**

As per Rule 25 of Mizoram Judicial Services Rules, 2006, the age of retirement of Judicial officer is 60 years. Rule 26 (2) of the said rules was

amended in 2013, according to which, the review of performance of the Judicial officer should be undertaken when the concerned officer completes 15 years of service and thereafter again, when (s)he attains the age of 50, 55 and 58 years. As per the letter of Registrar, Aizawl Bench of Guwahati High Court, there is no compulsory/premature retirement rule at the age of 50, 55 years etc., governing the civil servants in the State of Mizoram and the retirement age of civil servants is 60 years.

#### **ARUNACHAL PRADESH :**

By virtue of the Arunachal Pradesh Judicial Service (Amendment) Rules 2011, Rule 19 was amended by substituting 60 years for 58 years for the retirement of the member of service. Further, it is reported that the provision regarding the review at the age of 58 years which existed earlier in the Judicial Service Rules has been omitted by the same amendment in 2011. It appears that there is a proposal to amend Arunachal Pradesh Judicial Service Rules 2006 and if the proposal is approved, review will be undertaken after the officer concerned completes 15 years of service and thereafter, again when s(he) attains the age of 50, 55 and 58 years. At present, it appears that there is no provision in Arunachal Pradesh Civil Service Rules for compulsory/premature retirement at the age of 50, 55 years etc. Rule 23 provides that the conditions of service of the members of Judicial Service for which no express provision is made in the Rules shall be determined by the Rules and orders applicable to officers of State Civil Service.

**TRIPURA :**

Rule 21 of the Tripura Judicial Service Rules, 2003 bears the heading 'Retirement in public interest'. It lays down that the review of the career progress and other attributes of the Judicial Officers will be undertaken when the concerned officer(s) attain the age of 50 years, 55 years and if the Committee headed by the Chief Justice of the High Court considers that in public interest, the officer should be retired from service, he may be compulsorily retired by the Governor on the recommendation of the High Court by giving him a notice of 3 months or 3 months pay and allowance in lieu thereof. As regards the review at the age of 58 years, there is no specific rule. Probably, the rule quoted above can be resorted to.

**SIKKIM :**

In Sikkim, there is a specific provision in Sikkim Judicial Service Rules, 1975 and Sikkim Superior Judicial Service Rules 1980 declaring the age of retirement to be 60 years. As per the information received from the Registrar-General of High Court, there is no specific provision dealing with the review at the age of 58 years. However, under Rule 99 (2) of the Sikkim Government Service Rules, on attainment of the age of 50 years, the performance of Government servant is reviewed for examining his/her fitness to continue in service.

## **ANNEXURE II**

### **BRIEF NOTE ON COMPULSORY/PREATURE RETIREMENT IN PUBLIC INTEREST**

**1.** Compulsory retirement is a major punishment under the Central Civil Services (CCA) Rules, 1965. The same is the position in the Service Rules framed by the State Governments. Compulsory retirement, even though it is punishment, does not totally deprive the affected public servant of pension and gratuity. As per Rule 40 of CCS (Pension) Rules, 1972, a Government servant compulsorily retired may be granted pension or gratuity or both at a rate not less than two-thirds and not more than the Compensation pension or gratuity or both. The authority competent to impose the said penalty shall determine the same.

**2.** Retirement in public interest provided for by the Fundamental Rules, 1922 of the Central Government and the Service rules of the States is a different concept. There is no punitive element involved in such retirement. Though the expression 'compulsory retirement' is often used both in the rules framed by the State Governments and also in the judicial decisions while referring to such retirement in public interest, it is more appropriate to describe the same as 'premature retirement'. The inaccuracy in referring to premature retirement in public interest as 'compulsory retirement' was pointed out in Bishwanath Prasad Singh's case [2001 (2) SCC 305 at Para 16 page 319]. Premature retirement in public interest does not deprive the retired public servant of the pensionary benefits due for the service rendered by him.

**3.** The retirement in public interest is dealt with by Rule 56(j) of the Fundamental Rules of the Central Government. Rule 56 deals with 'Retirement'. Clause (a) specifies the retirement age as 60 years. Rule 56 (a) says "except as otherwise provided in these rules, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years." Clause (j) of Rule 56 lays down, as already stated, the provision for retirement in public interest. In Rule 56, the expression 'Compulsory Retirement' has been advisedly not used. The Fundamental Rule 56(j) reads as under:

- (j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:
  - (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.
  - (ii) In any other case after he has attained the age of fifty-five years;

The rule extracted above is the one that prevails after it was amended in May 1989. The amendment was mainly in respect of the age at which the retirement in public interest can be resorted to by the Government/appointing authority.

**4.** Rule 56(j) framed by Government of India in the year 1965 laid the foundation for premature retirement in public interest after the Government servant crosses the specified age (which by and large is 50 years or 55 years). Similar rules came to be framed by the State Governments in course of time. However, the



difference if any, between Central Rules and the States' Rules is in respect of age at which the appointing authority can undertake the review in order to decide whether the public servant concerned is fit to be continued thereafter. Prescription of minimum qualifying service of varied spells for undertaking such review is one of the features in the States' rules.

**5.** The nature and nuances of retirement in public interest was explained in *Union of India v JN Sinha* AIR 1971 SC page 40 which is often quoted. The constitutional validity of FR 56(j) was upheld by the Supreme Court in *T.G. Shivacharan Singh v State of Mysore*, AIR 1965 SC 280. The Supreme Court pointed out in *J.N. Sinha* (and earlier in *Shyam Lal's case*, 1954) that the power under Rule 56(j) is in terms absolute, premature retirement does not involve civil consequences as the employee does not lose any right acquired by him before retirement, that the Rule 56(j) was not intended to take penal action against the Government servant and above all, it was observed that Rule 56(j) merely embodied one of the facets of pleasure doctrine in Article 310 of the Constitution. While negating the plea that the principles of natural justice have to be followed, the Supreme Court observed :

"Whether the exercise of power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of power" (vide para 7).

In a more recent decision – *Rajendra Singh Verma v LT. Governor (NCT of Delhi)* (2011) 10 SCC 1 the Supreme Court reiterated the same principles by observing at para 91 that :

“an order of compulsory retirement is not a punishment and does not have adverse consequences and, therefore, the principles of natural justice are not attracted”.

**6.** Each one of the above propositions laid down by the Hon'ble Supreme Court in *J.N. Sinha* (reiterated in several decisions including the last mentioned case of *Rajendra Singh Verma*) does give rise to many doubts. We are not sure whether they are in conformity with the recent constitutional developments expanding the doctrine of natural justice and the horizons of Articles 14 and 21 of the Indian Constitution. Be that as it may, the concept is firmly imbedded in the service jurisprudence.

**7.** In the treatise on the 'Law Relating to Public Service'<sup>4</sup> authored by Dr. Samaraditya Pal - a Senior Lawyer & Jurist, critical comments on the correctness of the decision in *J.N. Sinha* and other cases following the same are offered. Further, the Ld. author quoted the pertinent observations in *Baldev Raj v Union of India*, 1980(4) SC 321 in the very context of FR 56(j). This is what Krishna Iyer J observed in that case:

“The right to retire is not absolute though so worded. Absolute power is anathema under our constitutional order. 'Absolute' in FR 56(j) merely means 'wide' not 'more'”.

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<sup>4</sup> The latest edition is 4<sup>th</sup> Edn. of 2021. The subject is dealt with in Chapter-38.

**7.1** Adverting to the proposition that premature retirement does not involve civil consequences, the learned author – Dr. S. Pal pertinently points out that the reasons given in **JN Sinha** may go counter to the dicta in *Parshotam Lal Dhingra v Union of India*, AIR 1958 SC 36 at page 47 wherein it was observed that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily relieved. Dr S. Pal notes: “It is this right to hold the post which is taken away by an order of premature retirement and this right today has been declared to be included in the fundamental right to life under Article 21.” As regards the applicability of the principles of natural justice, the learned author points out that the land-mark decision of Supreme Court in *Kraipak’s* case (AIR 1970 SC 150) was distinguished on the facts, though in the earlier decision, the same learned Judge unequivocally recognized the expanded horizons of the principles of natural justice which were operating in comparatively restricted areas till then. The Ld. author laments that – “*JN Sinha* unfortunately holds the field” and the larger benches of the Supreme Court have constantly followed *JN Sinha* case. He quotes the words of Thomas J in *M.S. Bindra v Union of India*, 1998 (7) SCC 310 to support his comments:

“The observations that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach correct conclusion, the same can be obviated on the assumption that other materials alone need to be looked into.”

In that case, premature retirement in public interest was construed as a measure of punishment for delinquency and therefore it was held that power under Rule 56(j) should not have been invoked.

**7.2** The test to be applied, in the words of the Supreme Court in *State of Uttar Pradesh v Shyamlal*, AIR 1971 SC 1251 is this:

“In ascertaining whether the order of compulsory retirement is one of punishment, it has to be ascertained whether in the order of compulsory retirement, there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned.”

Thus the language used has been apparently made sacrosanct. In this context, it may be mentioned that in *Jagdish Mitter's* case, AIR 1964 SC 449, the Supreme Court observed that the form in which the order is expressed will not be decisive and that its real character must be determined by reference to the material facts that existed prior to the order. Though this important observation was made in the context of a termination order of the temporary servant, the said observations of the Supreme Court can equally apply to premature retirement order, especially because the principle of substance and not the form is now well settled vide 7-Judge Bench of Supreme Court in *Shamsher Singh v State of Punjab* (AIR 1974 SC 2192 at page 2206) which was a case of 'compulsory retirement'. However, a different approach was adopted in the context of premature/compulsory retirement in public interest i.e., the language of the order itself should be an indicator of the punitive character of the order. After referring to this apparent inconsistency in the approach of the Supreme Court, the Ld. author Dr S. Pal points out –

“In fact the Courts have lifted the veil in several cases – including the cases of compulsory retirement to find out whether in reality it is an order of punishment....If it is suggested that the court is powerless to travel beyond the language of the order, then premature retirement would be the easiest device for inflicting punishment without holding any disciplinary proceedings.”

Though the Court can lift the veil in a given case, in order to find out whether in the garb of compulsory retirement an order of punishment has been meted out to the officer concerned, in the long line of the decisions of the Supreme Court till now dealing with the premature retirement, such approach has been rarely adopted. In the case of *High Court of Punjab and Haryana v Ishwar Chand Jain* (1999) 4 SCC 579, the Supreme Court reiterated the proposition that for the purpose of deciding whether the order of compulsory retirement is punitive or not, the Court can lift the veil of an innocuously worded order. This is rarely done and perhaps a difficult process.

**8.** The rigour of the public interest retirement process is heightened by yet another principle that the competent authority can act even on the basis of uncommunicated adverse remarks in the ACR in respect of which in the normal course, the affected person will have the right to make representation (vide the observations in para 90 of *Rajendra Singh Verma supra*).

**9.** We are only pointing out how the law relating to premature retirement in public interest has developed and how certain relevant principles laid down by the Supreme Court in order to place a check on the devices adopted to negate the guarantees enshrined in Art. 311 (2) have not been given due weightage in

addressing the legality or correctness of the orders of premature/compulsory retirement.

**10.** In this brief discussion, the Commission is broadly indicating the approach adopted by the apex court in testing the correctness or validity of the premature retirement in public interest and how the permissible grounds of attack have been confined to very limited grounds. In final analysis, we find that premature retirement in public interest has been made immune from attack from the constitutional angle and now, the legality of a premature retirement order is tested on strictly limited grounds such as arbitrariness or irrationality in reaching the conclusion and whether the order in reality is by way of punishment.

**ANNEXURE III**

**STATEMENT AS TO THE NUMBER OF JUDICIAL OFFICERS PREMATURELY RETIRED UNDER THE RESPECTIVE STATE JUDICIAL SERVICE RULES DURING THE PERIOD FROM 2011 TO 2020.**

S. No	Name of the High Court	2011			2012			2013			2014			2015			TOTAL
		(Years)			(Years)			(Years)			(Years)			(Years)			
		50	55	58	50	55	58	50	55	58	50	55	58	50	55	58	
1.	Andhra Pradesh	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
2.	Telangana	--	--	07	--	--	04	--	--	02	--	--	01	--	--	04	<b>18</b>
3.	Bombay	05	10	09	03	02	03	01	04	02	02	07	04	--	01	--	<b>53</b>
	Goa	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
4.	Calcutta	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
5.	Chhattisgarh	16	--	--	--	--	--	--	--	--	--	--	--	--	--	--	<b>16</b>
6.	Guwahati	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	Assam	--	--	01	--	01	02	--	--	02	--	--	--	--	--	--	<b>06</b>
	Arunachal Pradesh	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	Mizoram	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
7.	Gujarat	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
8.	Himachal Pradesh	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
9.	J & K	--	--	--	--	--	--	--	--	--	--	01	02	--	--	--	<b>03</b>
10.	Jharkhand	--	--	04	06	04	--	--	--	--	01	02	02	--	--	--	<b>19</b>

S. No	Name of the High Court	2011			2012			2013			2014			2015			TOTAL
		(Years)			(Years)			(Years)			(Years)			(Years)			
		50	55	58	50	55	58	50	55	58	50	55	58	50	55	58	
11.	Karnataka	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
12.	Kerala	--	--	01	--	02	01	--	--	--	--	--	--	01	--	--	05
13.	Madhya Pradesh	06	--	--	04	--	--	--	--	--	11	--	02	04	--	--	27
14.	Madras	01	--	02	--	--	01	--	--	03	--	--	01	--	--	02	10
15.	Meghalaya	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
16.	Manipur	--	--	--	--	01	--	--	--	--	--	--	--	--	--	01	02
17.	Orissa	--	01	01	01	01	01	--	--	--	--	01	02	--	--	01	09
18.	Patna	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
19.	Punjab and Haryana	06	02	03	03	01	--	06	01	01	01	--	--	03	--	--	27
20.	Rajasthan	09	--	--	--	--	--	--	--	--	--	--	--	--	01	--	10
21.	Sikkim	--	--	--	--	--	02	--	--	--	--	--	--	--	--	--	02
22.	Tripura	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
23.	Uttarakhand	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
24.	Delhi	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
25.	Allahabad	--	--	--	--	--	--	09	--	--	--	--	--	--	--	--	09
	<b>TOTAL</b>	<b>43</b>	<b>13</b>	<b>28</b>	<b>17</b>	<b>12</b>	<b>14</b>	<b>16</b>	<b>05</b>	<b>10</b>	<b>15</b>	<b>11</b>	<b>14</b>	<b>08</b>	<b>02</b>	<b>08</b>	<b>216</b>



S. No	Name of the High Court	2016			2017			2018			2019			2020			TOTAL
		(Years)			(Years)			(Years)			(Years)			(Years)			
		50	55	58	50	55	58	50	55	58	50	55	58	50	55	58	
1.	Andhra Pradesh	--	--	--	--	--	--	--	--	--	03	01	01	01	--	06	
2.	Telangana	--	--	07	--	--	08	02	07	04	--	01	02	01	01	01	34
3.	Bombay	01	03	10	01	--	02	10	05	05	--	--	--	02	02	--	41
	Goa	--	01	--	--	--	--	--	--	--	--	--	--	--	--	--	01
4.	Calcutta	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
5.	Chhattisgarh	--	--	--	03	--	--	--	--	--	--	--	--	--	--	--	03
6.	Guwahati																
	Assam	--	--	--	--	--	--	--	--	01	--	--	--	--	--	--	01
	Arunachal Pradesh	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	Mizoram	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
7.	Gujarat	26	08	01	--	--	--	--	--	--	--	--	--	--	--	--	35
8.	Himachal Pradesh	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
9.	J & K	--	--	--	--	--	--	--	--	--	--	--	--	01	--	--	01
10.	Jharkhand	--	--	--	01	02	09	--	--	01	--	--	--	--	--	--	13
11.	Karnataka	--	--	--	--	--	--	--	--	--	--	05	--	03	05	--	13

S. No	Name of the High Court	2016			2017			2018			2019			2020			TOTAL
		(Years)			(Years)			(Years)			(Years)			(Years)			
		50	55	58	50	55	58	50	55	58	50	55	58	50	55	58	
12.	Kerala	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
13.	Madhya Pradesh	--	--	02	--	--	01	02	--	--	--	--	--	--	--	01	06
14.	Madras	--	--	04	--	01	04	01	--	03	--	--	08	01	07	02	31
15.	Meghalaya	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
16.	Manipur	--	--	01	--	--	--	--	--	--	--	--	--	--	--	--	01
17.	Orissa	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
18.	Patna	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
19.	Punjab & Haryana	--	--	--	01	01	--	--	01	--	--	--	--	--	--	--	03
20.	Rajasthan	--	--	--	01	--	--	01	--	--	--	--	--	--	--	--	02
21.	Sikkim	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
22.	Tripura	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
23.	Uttarakhand	--	--	--	--	--	--	--	--	--	01	--	--	--	--	--	01
24.	Delhi	--	--	--	--	--	01	--	--	--	--	--	01	--	--	--	02
25.	Allahabad	14	--	--	--	--	--	--	--	--	--	--	--	--	--	--	14
	<b>TOTAL</b>	<b>41</b>	<b>12</b>	<b>25</b>	<b>07</b>	<b>04</b>	<b>25</b>	<b>16</b>	<b>13</b>	<b>14</b>	<b>01</b>	<b>09</b>	<b>12</b>	<b>08</b>	<b>17</b>	<b>04</b>	<b>208</b>

## CHAPTER-II

### SERVICES OF RETIRED JUDGES

**1.** Almost all the Judicial officers retire as District Judges (in different grades) in the normal course. Only few officers who are appointed as Junior Civil Judges from the service quota (by way of recruitment by transfer) retire as Senior Civil Judges. In AIJA case of 2002 (2002 (4) SCC 247), the recommendation of Justice K.J. Shetty Commission (FNJPC) for the increase of retirement age to 62 years was rejected by the Supreme Court at para 26.

"26. The Shetty Commission had recommended that there should be an increase in retirement age from 60 to 62 years. In our opinion, this cannot be done for the simple reason that the age of retirement of a High Court Judge is constitutionally fixed at 62 years. It will not be appropriate, seeing the constitutional framework with regard to the judiciary, to have an identical age of retirement between the members of the subordinate judicial service and a High Court. As of today, the age of retirement of a Supreme Court Judge is 65 years, of a High Court Judge it is 62 years and logically the age of retirement of a judicial officer is 60 years. This difference is appropriate and has to be maintained."

At the same time, a direction was given in regard to re-employment in the same paragraph –

"However, as there is backlog of vacancies which has to be filled and as the Judge strength has to be increased, as directed by us, it would be appropriate for the States in consultation with the High Court to amend the service rules and to provide for re-employment of the retiring judicial officer till the age of 62 years if there are vacancies in the cadre of the District Judge. We direct this to be done as early as possible".

**2.** Pursuant to this direction, after considerable time, 17 States have framed the rules permitting re-employment up to the age of 62 years if the vacancies are available. The States in which such provision has been made are as follows:

<b>S.No.</b>	<b>State</b>
1.	Assam
2.	Arunachal Pradesh
3.	Bihar
4.	Chhattisgarh
5.	Delhi
6.	Goa
7.	Gujarat
8.	Madhya Pradesh
9.	Maharashtra
10.	Manipur
11.	Meghalaya
12.	Mizoram
13.	Orissa
14.	Rajasthan
15.	Sikkim
16.	Tripura
17.	West Bengal

**3.** The typical rules in some of these States read thus:

- **Assam** : Rule 21 of Assam Judicial Service Rules 2003 reads :

21. RE-EMPLOYMENT AFTER RETIREMENT.

(1) Judicial Officers of Grade-I retired at the age of 60 years may be re-employed till the age of 62 years, if the High Court so desires, provided there are vacancies in Grade-1 and they satisfy the following conditions:

- (i) There is no adverse comment in the ACR's so far disposal/integrity and character are concerned.
- (ii) The Officer was not dismissed or removed or compulsorily retired or made to seek retirement. (iii) The Officer had sought voluntary retirement after initiation of departmental proceedings/ inquiry.

(2) Judicial Officers will have to be found fit and eligible to continue in service by the High Court after assessing and evaluating the record from his continued utility.

(3) The order of re-employment shall be made by the Governor in consultation with the High Court.

- **Arunachal Pradesh** : Rule 21 Arunachal Pradesh Judicial Service Rules 2006 reads :

21. (1) Judicial Officers of Grade-I retired at the age of 60 years are eligible for re-employment on such consideration by the High Court, provided there are vacancies in Grade-I and they satisfy the following conditions. :-

(i) There is no adverse comment in the ACRs so far disposal of cases/integrity and character are concerned.

(ii) The Officer was not dismissed or removed or compulsorily retired or made to seek retirement.

(iii) The Officers had not sought voluntary retirement after initiation of departmental proceedings/inquiry.

(2) The Judicial Officers will have to be found fit and eligible to continue in service by the High Court after assessing and evaluating the record for his continued utility.

(3) The order of re-employment shall be made by the Governor in consultation with High Court.

- **Bihar:** Rule 5A Bihar Superior Judicial Service Rules 1951 reads :

Rule 5A : The age of retirement of the members of this cadre shall be 60 years. Provided that, if required, re-employment of the retired Judicial Officers of this cadre may be made in consultation with the High Court till the age of 62 years.

- **Chhattisgarh:** Rule 13(1) Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules 2006 reads :

13. Superannuation Age. –

(1) Subject to the provisions of sub-rule (2), every member of the service shall retire from the service on the afternoon of the last day of the month, in which he attains the age of sixty years.

Provided ....

Provided further that an officer of the service, who has retired on superannuation at the age of sixty years, may be re-employed on the recommendation of the High Court up to the age of sixty two years in case of vacancy in the cadre of District Judge, on such terms and conditions as would be decided by the Government in consultation with the High Court.

(2) ....

(3) ....

- **Delhi:** Rule 26B of Delhi Higher Judicial Service Rules 1970 reads :

26B. Age of superannuation.- A Member of the Service shall retire from service in the afternoon of the last day of the month in which he attains the age of sixty years:

Provided ....

Provided ....

Provided also also that the Administrator may, in consultation with the High Court, re-employ retiring or retired judicial officers upto the age of sixty two years if there are vacancies in the cadre of District Judge

Provided ....

- **Goa:** Rule 16 of Goa Judicial Service Rules, 2013 reads :

16. Age of Superannuation.— Every member of the Judicial Service shall retire by superannuation on attaining the age of 60 years, subject to clearance by Special Review Committee constituted by the Chief Justice of the High Court for the purpose, which Committee shall review the cases of all Judicial Officers by following the procedure prescribed for compulsory retirement under the Service Rules applicable to them, on their attaining the age of 58 years:

Provided that the High Court may in suitable cases re-employ District Judges, subject to their physical fitness, up to the age of 62 years according to exigencies of situation.

- **Gujarat:** Rule 20 of Gujarat State Judicial Service Rules, 2005 reads :

20. Age of Superannuation – The age of superannuation of a member of the service shall be 60 years.

Provided that the appointing authority may re-employ a retired Judicial Officer till the age of 62 years in public interest if there are vacancies in the cadre of District Judges.

- **Madhya Pradesh :** Rule 14 of Madhya Pradesh Higher Judicial Service (Recruitment and Service) Rules, 2017 reads :

14. Superannuation Age

(1) Subject to the provisions of sub-rule (2) and (3), every member of the service shall retire from the service on the afternoon of the last day of the month, in which he attains the age of 60 (sixty) years provided he is found fit and suitable to continue after 58 (fifty eight) years in service by the High Court:

Provided....

Provided further that an officer of the service, who has retired on superannuation at the age of 60 (sixty) years, may be re-employed on

the recommendation of the High Court up to the age of 62 (sixty two) years to act as Presiding Officers of the Family Court.

- (2) ....
- (3) ....

- **Maharashtra:** Rule 17 Maharashtra Judicial Service Rules 2008 reads :

17. Age of Superannuation :

Every member of the judicial service shall retire on superannuation on the afternoon of the last day of the month, in which he attains the age of 60 years subject to clearance by Special Review Committee constituted by the Chief Justice of High Court for the purpose which Committee shall review the all cases of all Judicial Officers by following the procedure prescribed for compulsory retirement under the Maharashtra Civil Service Rules applicable to them on attaining the age of 58 years.

Provided....

Provided further that the High Court may in suitable cases re-employ District Judges, subject to their physical fitness, upto the age of 62 years according to the exigencies of situation.

- **Manipur:** Rule 21 of Manipur Judicial Service Rules 2005 reads:

21. Re-employment after retirement:

- (1) Judicial Officers of Grade-I retired at the age of 60 years may be re-employed till the age of 62 years, if the High Court so desires, provided there are vacancies in Grade-I and they satisfy the following conditions:
  - (i) There is no adverse comment in the ACR's so far as disposal/Integrity and character are concerned.
  - (ii) The officer was not dismissed or removed or compulsorily retired or made to seek retirement.
  - (iii) The officer had sought voluntary retirement after initiation of departmental proceedings/inquiry.
- (2) Judicial Offices will have to be found fit and eligible to continue in service by the High Court after assessing and evaluating the record for his continued utility.
- (3) The order of re-employment shall be made by the Governor in consultation with the High Court.

- **Meghalaya:** Rule 22 of Meghalaya Higher Judicial Service Rules 2015 reads:

22. Re-employment after Retirement: - (1) Judicial Officers of Grade-I retiring at the age prescribed by the recommendation of Justice Shetty Commission are eligible for reemployment on such consideration as are required to be made by the High Court. In the case of consideration by the High Court, the assessment shall be made on the following premises:-

- (i) there is no adverse comment in the ACR's in so far as disposal/integrity and character are concerned;
- (ii) the officer was not dismissed or removed or compulsorily retired or made to seek retirement; and
- (iii) the officer had not sought voluntary retirement after initiation of departmental proceedings/inquiry.

(2) The order of re-employment other than officers of the Registry of High Court shall be made by the Governor in consultation with the High Court.

- **Mizoram :** Rule 27 of the Mizoram Judicial Service Rules, 2006 reads:

27. Re-employment after retirement: (1) Judicial Officer retiring at the age of 60 years may be re-employed till the age of 62 years, if the High Court so desires provided there are vacancies in the Cadre appropriate for such re-employment and they satisfy the following conditions.

- (i) There is no adverse comment in the ACRs so far as disposal/integrity and character are concerned.
- (ii) The Officer was not dismissed or removed or compulsorily retired or made to seek retirement.
- (iii) The Officer has not sought voluntary retirement after initiation of departmental proceedings/inquiry.

(2) Judicial Officer will have to be found fit and eligible to continue in service only after assessing and evaluating the record for his continued utility and recommended by the High Court. (3) The order of re-employment shall be made by the Governor, only on the recommendation of the High Court.

- **Orissa:** Rule 43 of the Orissa Superior Judicial Service Rules, 2007 reads:

43. Re-employment : An officer of the service who has retired at the age of 60 years on superannuation may be re-employed on the recommendation the High Court for any period till the age of sixty years if there is vacancy in the cadre of district Judge on such terms and conditions as would be decided by the Government in consultation with the High Court.

- **Rajasthan:** Rule 56 of the Rajasthan Judicial Service Rules, 2010 reads:



**56. Re-employment.** - The Appointing Authority in case of temporary vacancy in the Cadre of District Judge on the recommendation of the Court may provide re-employment to a retired Judicial Officer in the District Judge Cadre till the age of 62 years.

- **Sikkim:** Rule 14A (4) of the Sikkim Judicial Service Rules, 1980 reads :

**14 A.(1) Age of Superannuation :**

(1) A member of the service shall retire from service in the afternoon of the last day of the month in which he attains the age of 60 years.

(2) ....

(3) ....

(4) Notwithstanding anything contained hereinabove, a member of the service on attaining the age of 60 years, may be considered for re-employment from 60 to 62 years if there is vacancy and subject of fitness and efficiency.

- **Tripura:** Rule 22 of the Tripura Judicial Service Rules, 2003 reads:

22. Re-employment after retirement :

(1) Judicial Officers of Grade-I retired at the age of 60 years may be reemployed till the age of 62 years, if the High Court so desires, provided there are vacancies in Grade-I and they satisfy the following conditions:

(i) There is no adverse comment in the ACRs so far disposal of cases and integrity and character are concerned.

(ii) The officer had not sought voluntary retirement after initiation of departmental proceedings/inquiry.

(iii) Judicial Officers will have to be found fit and eligible to continue in service by the High Court after assessing and evaluating the record.

- **West Bengal:** Rule 37 of the West Bengal Judicial (Conditions of Service) Rules, 2004 reads:

37. Re-employment – If there are vacancies in the cadre of the Higher Judicial Officer in the rank of District Judge and such vacancies cannot be readily filled up for want of suitable candidate, the High Court may provide re-employment to a retiring Higher Judicial Officer in the rank of District Judges holding any of the posts as mentioned in clause (b) and (c) of sub-rule (1) of rule 24, for a period not exceeding one year at a time till he attains the age of 62 years.

**4.** But, there is no clear information as regards the implementation of such rule, that is to say, to what extent the services of such retired officers are

being availed of and how many retired Judges have been re-employed either in Judiciary or statutory bodies/Tribunals. To the extent the information is received from the High Courts, the same is tabulated in the **Annexure-I**. *Prima facie*, it appears that the rules have been promulgated in seeming compliance with the Judgment of Hon'ble Supreme Court in AIJA (2002) and its implementation has not been seriously taken. In fact, as pointed out in the following paragraphs, there are practical difficulties too in the implementation of such rule.

**5.** The Commission is of the view that the prescription of the age of 62 years for re-employment and not beyond that, needs to be modified especially in the light of experience. The said directive proceeds on the assumption that the retired Judicial officer will be re-employed immediately and s(he) will have a tenure of 2 years i.e. upto 62 years. But, there are practical difficulties. The immediate re-employment is a remote possibility. The proposals have to be sent to the Government and it is common knowledge that the Governments take their own time to give the approval. Even if some priority is accorded, 4 to 5 months may lapse. The High Court will have to do an exercise for identifying the Courts in which the retired District Judges can be appropriately posted, keeping in view *inter alia*, the number of candidates likely to be appointed or promoted in the near future. Further, there may be earlier retirees who would have crossed the age of 61. It will only be just and appropriate that such officers who could not get the re-employment earlier should be able to get this benefit. Above all, it is common knowledge that on account of improved health conditions/medical facilities, the retired Judges can actively work up to 65 years. **Keeping all these**

**considerations in view, it is desirable that the outer limit of 62 years is modified to 65 years.** However, the retired/re-employed Judges shall have a tenure of not less than 2 years, but not beyond 3 years. For instance, if s(he) has already crossed the age of 63, the re-employment in Judiciary may be avoided. Of course, if there is shortfall of a month or so, the High Court can relax this condition. Short-tenure appointments should, as far as possible, be avoided in the interest of effective discharge of functions.

**5.1** Therefore, the Judicial Service Rules or the relevant administrative orders need to be suitably modified in the light of the revised directives if any that may be given by this Hon'ble Court as regards the upper age limit for re-employment.

**6.** The retired Judges re-employed/appointed on *ad-hoc* basis shall get the last drawn pay minus pension and the allowances and facilities should be on a limited scale. For instance, a reasonable amount towards conveyance allowance has to be provided. S(he) may be allowed to avail the services of a driver-cum-attender on a consolidated pay on temporary basis or an allowance in lieu thereof may be given. S(he) may be provided with such other essential facilities as may be decided by the High Courts.

**7.** The services of retired Judges/District Judges are required by the Government to man the posts in the statutory bodies or quasi Judicial Fora. Their services can also be utilized as Legal Advisors to the Government/State owned

Corporations. Presently, lot of adhocism prevails and the appointments are made on pick-and-choose by the Governments. Necessary conditions have to be created for disbanding such practices. It appears that in Karnataka State, presently, a High Court Judge is associated with the process of selection to the post of Chairperson of District Consumer Forum.

**8.** It is desirable that for the purpose of recommending candidates for the appropriate Courts and Tribunals within their jurisdiction, the High Courts draw up panels of retired Judges whose performance has been satisfactory and without blemish. Such panel consisting of eligible retired District Judges between the age of 60 and 63 may be prepared every year by 30<sup>th</sup> April so that their services can be utilized in appropriate positions as decided by the High Court and by the State Government in relation to the Tribunals/Authorities created by the statutes or rules. It is also desirable that retired Officers graded 'excellent' shall be given preference. The panel shall be circulated to the State Governments who in turn shall forward it to the Heads of the Department **and** Heads of statutory bodies/ Tribunals.

**9.** Presently, in most of the States, the services of retired Judges are not being utilized in the Courts – Civil or Criminal in spite of persisting number of vacancies. A tabular statement containing State-wise details of retired Judges re-employed during the last 10 years is annexed to this Chapter. However, the Commission could not secure necessary information from many High Courts. In some States like Telangana/Andhra Pradesh, retired District Judges are appointed as Chairpersons of permanent Lok Adalats. In Madhya Pradesh, during the years

2017 and 2018, quite a number of retired District Judges were appointed on *ad-hoc* basis as Judges of Family Courts. Largest number of retired District Judges have been appointed on contract basis in Maharashtra during the years 2018 and 2020 to man the newly created Fast Track Courts and the Special Courts set up to try offences under POCSO Act etc., pursuant to the 14<sup>th</sup> Finance Commission Scheme. However, their appointment is only for one year, may be because the sanction of Courts is accorded for one year only.

**9.1** In the state of Telangana, 38 Fast Track Special Courts (22 Courts of Additional District & Session Judges and 16 Courts of Senior Civil Judges) which were initially created under the earlier Central scheme are still being continued on yearly basis with the sanction of State Government funds. However, it appears many such courts are not operational for want of Judges. It is learnt that the services of retired District Judges are not being utilized in these courts.

**9.2** It may be mentioned that the recommendations of 14<sup>th</sup> Finance Commission for setting up additional Courts including the Fast-track Courts with 60% of expenditure being borne by the Central Government are based on the Memorandum/proposals submitted by the Department of Justice on 29<sup>th</sup> May 2015.

**10.** There is ample scope for the retired Judges being appointed on *ad-hoc* basis with the creation of new Fast Track Courts and other Special Courts – for dealing with cases under POCSO Act, Criminal cases against Legislators, additional Family Courts etc. Family Courts are burdened with overload of work in many

places. Moreover, a large number of civil and criminal cases ripe for trial are awaiting disposals, with the pendency period exceeding 5 years. Further, it is a known fact that the Covid pandemic had an adverse effect on the disposals and on the recruitment process too. For all these reasons, the need for deployment of retired District Judges is felt at the present juncture more than ever before.

**11.** Broadly speaking, the services of retired District Judges can be usefully utilized in the following categories of Courts or in the disposal of following types of cases:

- (i) Chairpersons of permanent Lok Adalats, who can also oversee the work related to Conciliation in collaboration with Secretaries of District Legal Services Authorities
- (ii) Fast-track Courts sanctioned by the States exclusively with their funds or as per the 14<sup>th</sup> Finance Commission Scheme for the trial of old Civil and Criminal cases ripe for trial
- (iii) Special Courts set up to try offences under specified enactments such as POCSO Act, Rape Cases, Cases against legislators, Cases under Section 138 of N.I. Act (subject to conferment of magisterial powers)
- (iv) Family Courts
- (v) Land Tribunals if any, constituted in some States

- (vi) Tribunals having less pendency of work such as Wakf property Tribunals, Tribunals constituted under special enactments such as those related to Coop Societies, Endowments.

**11.1** This is only an illustrative list. The High Courts (chief Justice and his companion Judges) will naturally be in a better position to identify the Courts or cases which shall be entrusted to re-employed Judges, depending *inter alia* on the exigencies of work-load and the priority areas.

**12.** The restriction in the existing rule in Madhya Pradesh that retired Judges can be re-employed only in Family Courts ought to be removed.

**13.** In conclusion, we would only like to stress that the process of re-employment of retired Judicial officers should not lead to a situation of the regular recruitment/appointment process getting delayed. It needs no emphasis that there shall not be a sense of complacency in initiating or proceeding with the recruitment process on account of the fact that some Courts are functioning with retired Judicial officers. As and when postings are given to the recruited officers after training, they must be able to assume office without any delay. If, for that reason, it is necessary to dispense with the services of re-employed/retired officers, there shall be no hesitation in doing so merely because they have worked for less than two years. The re-employed Judges likely to face discharge may be put on one month's notice or given pay in lieu of one month's notice.

#### **14. SERVICES OF RETIRED JUDGES - RECOMMENDATIONS**

**a.** The direction of the Hon'ble Court in AIJA Judgment (2002) has to be modified by enlarging the age limit for re-employment by substituting the words "62 years" by "65 years". The outer-limit of 62 years prescribed by the Hon'ble Court is too short and does not serve the purpose.

**b.** The services of retired Judges need not necessarily be utilized in Family Courts only. Such stipulation in Madhya Pradesh rule shall be dispensed with.

**c.** The period of recruitment of the retired Judges shall, as far as possible be for a minimum period of two years and a maximum of three years.

**d.** A panel of retired District Judges who are considered to be fit for re-employment needs to be drawn-up every year by the High Courts. Those who are graded 'excellent' may be given preference.

**e.** The panel shall also be circulated to the State Government so that the empanelled retired Judges only may be chosen by the Government or the Heads of Statutory Tribunals in appropriate positions.

**f.** The retired Judges shall be paid the last drawn pay minus pension apart from the benefits and allowances that were being drawn at the time of retirement. They may be provided with such facilities or special allowance which



the High Courts may consider necessary for the discharge of their functions without hassles.

**g.** There shall be more serious effort on the part of the High Courts for availing the services of retired Judges, more so for the reason that new courts such as Fast Track Courts and Special Courts under POCSO Act etc., are being created under the 14<sup>th</sup> Finance Commission Scheme.

The Courts in which their services can be utilized are broadly indicated earlier in this report.

**h.** The re-employment of retired Judges should not lead to a situation of the recruitment process getting delayed. If the vacancy is no longer available, they can be discharged after giving a month's notice or pay.

## **II. RETIREMENT AGE IN MADHYA PRADESH AND CHHATTISGARH**

**1.** Having noticed higher retirement age (of 62 years) for Government servants in Madhya Pradesh with effect from March 2018, we have expressed the view that by reason of that, the retirement age of the Judicial Officers all over the country need not be raised to 62 years<sup>5</sup>. The enhanced age operating in a single State since March 2018 need not form the basis for recommending higher retirement age especially in view of the observations made in AIJA 2002 (4) SCC 247 at para 26. However, we have not examined the question with specific reference to the State of Madhya Pradesh whether the benefit of higher retirement age ought to be given.

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<sup>5</sup> Vide this Commission's Report Part-I Vol.-II Page 54 Para 4

**2.** Further, it has since come to the notice of the Commission that in the neighbouring Chhattisgarh State also, the age of retirement of Government servants stands raised to 62 years with effect from 31.08.2013 vide Ordinance dated 23.08.2013.

**3.** Having addressed that issue now, the Commission is of the view that the benefit of higher retirement age at par with State Government servants of Madhya Pradesh and Chhattisgarh shall be extended to Judicial Officers also in those States. In fact, but for the view expressed by the Supreme Court in the aforementioned Judgment, in all probability, the State Government would have extended that benefit to the Judicial Officers as well in the normal course. Those observations of Supreme Court were made in the context of the then existing situation. The problem of State Government officers having a higher retirement age than the Judicial Officers in any State was apparently not contemplated by the Hon'ble Court at that time.

**4.** Uniformity in service conditions including retirement age does not mean that Judicial Officers of a particular State should suffer disadvantage or face an anomaly. Uniformity in service condition is a norm that has been laid down to benefit the Judicial Officers by virtue of their functions and status and was never intended to act to their detriment in a particular State or States. The subsequent events shall be duly taken into account and the said principle should be suitably modulated and adapted to cope up with the future developments. Otherwise, it would result in sheer injustice and disappointment which, in turn, jeopardizes the concept of judicial independence and the sovereign functions the Judges are

expected to perform under the Constitution and the laws. The edifice on which the principle of better service conditions to the members of judicial service is evolved will be eroded if in the name of uniformity of service conditions, the Judicial Officers of a particular State cannot get the benefit of extended superannuation age. The judicially ordained retirement age which was meant to ensure better service conditions and congenial work environment shall not turn out to be counter-productive. The uniformity principle in such circumstances needs to be rationalized in order to subserve the objective behind the very same principle.

**5.** The principle laid down in the Judgment of Supreme Court in broad terms is obviously meant to benefit the Judicial Officers, but shall not become an obstacle to deny the legitimate benefit if any, conferred by a State or States. Just like the well-established principle that equality does not mean arithmetical equality, uniformity in service conditions all over the country does not mean that the peculiar circumstances existing in a particular State cannot be addressed in proper perspective in order to avoid injustice. An impression ought not to be created that the Judges exercising sovereign functions should be on a lower pedestal in respect of any service conditions when compared to the executive officials of a State. There is no hard and fast principle that the retirement age of Judicial Officers should invariably be below 62, which is the age of retirement of High Court Judges.

**6.** Therefore, the Commission is of the considered view that the benefit of retirement age available to other civil servants of the States of Madhya Pradesh and Chhattisgarh shall not be denied to the Judicial Officers alone. Accordingly, **a directive needs to be issued by the Hon'ble Court that the State**

**Governments of Madhya Pradesh and Chhattisgarh shall consider extending the benefit of higher retirement age to the Judicial Officers as well, atleast prospectively i.e. with effect from the date of the Judgment of the Hon'ble Court in the present case, with a specific observation that the dicta in the earlier AIJA cases shall not come in the way of State Government granting such benefit.**

**7.** In case the retirement age of Judicial Officers in Madhya Pradesh is directed to be increased to 62 years at par with the State Government officers, the review for the purpose of assessing the continued utility to serve the judiciary has to be undertaken before the Judicial Officer attains the age of 60 years and if found unfit for retention in service, the officer concerned shall retire on attaining the age of 60 years. However, retirement in public interest can be resorted to in appropriate cases after the Judicial Officer attains the age of 55 years.

**8.** We may mention that at the conference in Bhopal, the Judicial Officers present addressed us on this persisting anomaly and made a fervent plea for conferring the benefit of the enhanced superannuation age of 62 years which benefit is available to the other civil servants in the State.

### **III. RE : RETIREMENT AGE IN GENERAL**

**1.** Before parting with the subject, we would like to say a few words on the retirement age in general. As noted earlier<sup>6</sup>, a 3-Judge bench of this Court in AIJA case of 2002 (2002, 4 SCC 247) vide para 26 rejected the recommendation of

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<sup>6</sup> Vide discussion on services of retired Judges para 1 Part-II of this Chapter as well as page 54 para 4 Vol. II Part I of the Report)

FNJPC that the superannuation age of members of subordinate judiciary shall be 62 years. Therefore, this Commission was not inclined to reiterate the same recommendation on the basis of enhanced retirement age of other State Government servants in a single State i.e., Madhya Pradesh. Now, Chhattisgarh has fallen in line with its neighbouring State – Madhya Pradesh. We are recommending that the Judicial Officers of these two States shall not be at a disadvantage vis a vis their counter-parts in the State service. This recommendation if accepted, may incidentally open doors for fresh consideration of the appropriate retirement age for Judicial Officers by this Hon'ble Court.

**2.** Unfortunately, the retirement age of High Court Judges has not been increased so far though there was a proposal in this regard long back. If such amendment comes into force, there shall be no difficulty in upward revision of superannuation age of the members of Subordinate Judiciary. Irrespective of that, the question of enhancement of retirement age of Judicial officers across the board – all over the country, deserves to be revisited now especially in the light of subsequent developments as regards the retirement age of other Government servants.

**3.** Therefore while considering the recommendation made by this Commission in respect of retirement age of Judicial Officers of Madhya Pradesh and Chhattisgarh, it is perhaps appropriate to consider the larger issue whether the retirement age for all the Judicial Officers in the country shall be enhanced to 62 years, even in the absence of change in the retirement age of the High Court

Judges. **In other words, we suggest that a fresh look may be taken by the Hon'ble Court as regards the correctness of the reasoning given in para 26 of AIJA case (2002).**

**4.** The Commission could not go into this larger issue firstly, for the reason that the apex Court had already rejected the recommendation of FNJPC and secondly, in the Consultation paper released in 2018, this issue was not focused because the factum of increased retirement age in Madhya Pradesh and Chhattisgarh just then did not come to the notice of the Commission.

## Annexure I

### STATEMENT AS TO THE NUMBER OF JUDICIAL OFFICERS RE-EMPLOYED UNDER THE RESPECTIVE STATE JUDICIAL SERVICE RULES DURING THE PERIOD FROM 2014 TO 2020.

S.No.	States	Judicial Officers re-employed during last 7 years						
		2014	2015	2016	2017	2018	2019	2020
1.	<b>Assam</b>	--	--	--	--	--	--	--
2.	<b>Arunachal Pradesh</b>	--	--	--	--	--	--	--
3.	<b>Bihar</b>	--	--	--	--	--	--	--
4.	<b>Chhattisgarh</b>	--	--	--	--	--	--	--
5.	<b>Delhi</b>	--	--	--	--	--	--	--
6.	<b>Goa</b>	--	--	--	--	--	--	--
7.	<b>Gujarat</b>	--	01	--	01	03	01	--
8.	<b>Madhya Pradesh</b>	14	20	19	05	--	--	--
9.	<b>Maharashtra</b>	--	--	--	--	17	01	30
10.	<b>Manipur</b>	--	--	--	02	--	--	--
11.	<b>Meghalaya</b>	--	--	--	--	--	--	--
12.	<b>Mizoram</b>	--	--	--	--	--	--	--
13.	<b>Orissa</b>	--	--	--	--	--	--	--
14.	<b>Rajasthan</b>	--	--	--	--	--	--	--
15.	<b>Sikkim</b>	--	--	--	--	--	--	--
16.	<b>Tripura</b>	01	--	--	--	--	--	--
17.	<b>West Bengal</b>	No information						

The above information is in respect of those States where the rule for re-employment upto the age of 62 years is enforced.

## **CHAPTER—III**

### **COMMUTATION AND RESTORATION OF COMMUTED PENSION**

#### **I. COMMUTATION OF PENSION**

**1.** Presently, the pension is calculated at 50% of the last drawn pay of the officer subject to commutation, if any, as stated earlier (See Part-I, Vol. II page 2 Para 4 of the Report). Every pensioner is eligible to commute a percentage of his monthly pension for a lumpsum payment, which is the commuted value of that percentage of pension. On commutation, the commuted portion of pension is exchanged for the lumpsum payment called commuted value. Commuted amount of pension is thus a recoverable advance/loan repayable periodically over a certain period. On Commutation, there is reduction in the amount of monthly pension for a certain number of years (presently and since long it is 15 years).

**1.1** Rule 5 of the CCS (Commutation of Pension) Rules, 1981 prescribes the limit of commutation of pension. It is 40% of the basic Pension; however, in the case of Judicial Officers it is 50% of the basic pension as per the recommendations of FNJPC (Chapter 22, Para 22.48 of the Report) as approved by Hon'ble Supreme Court in *AIJA v UOI*, AIR 2002 SC 1752, para 37 at page 1770.

**1.2** Rule 8 of the CCS (Commutation of Pension) Rules provides for Calculation of commuted value of Pension which reads :

The lumpsum payable to an applicant shall be calculated in accordance with the Table of the values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes absolute.



**1.3** Rule 6 lays down the dates on which the commutation of pension becomes absolute. In the case of a government servant who is due to retire on superannuation, it becomes absolute on the date following his retirement as provided for in Rule 6(1) (i-a) read with Rule 13(3).

**1.4** The 'Table' as mentioned in Rule 8 has been defined under Rule 3(1) (m) as to mean a table appended to these rules. The Table appended to the said rules is the one which provides for commutation value expressed in 'number of years purchase' based on the age at the next birthday and the same is also referred to as Commutation Factor. Commutation Factor is used to calculate the lumpsum amount which is paid immediately to the beneficiary in exchange of future pension payment. For ready reference, the Table is extracted hereunder:

CCS (COMMUTATION OF PENSION) RULES, 1981]

**TABLE  
COMMUTATION VALUES FOR A PENSION OF Rs. 1 PER ANNUM**

Effective from 1<sup>st</sup> January, 2006 (Annexure 5.1.2 of VIth CPC Report)  
[ See Rules 3 (1) (m) 8, 26 (7), 28 (5), 29 (1) and 29 (2) ]

Age next birthday	Commutation value expressed as number of year's purchase	Age next birthday	Commutation value expressed as number of year's purchase	Age next birthday	Commutation value expressed as number of year's purchase
20	9.188	41	9.075	62	8.093
21	9.187	42	9.059	63	7.982
22	9.186	43	9.040	64	7.862
23	9.185	44	9.019	65	7.731
24	9.184	45	8.996	66	7.591

25	9.183	46	8.971	67	7.431
26	9.182	47	8.943	68	7.262
27	9.180	48	8.913	69	7.083
28	9.178	49	8.881	70	6.897
29	9.176	50	8.846	71	6.703
30	9.173	51	8.808	72	6.502
31	9.169	52	8.768	73	6.296
32	9.164	53	8.724	74	6.085
33	9.159	54	8.678	75	5.872
34	9.152	55	8.627	76	5.657
35	9.145	56	8.572	77	5.443
36	9.136	57	8.512	78	5.229
37	9.126	58	8.446	79	5.018
38	9.116	59	8.371	80	4.812
39	9.103	60	8.287	81	4.611
40	9.090	<b>61</b>	<b>8.194</b>		

**[Basis : LIC (94-96) Ultimate Tables and 8.00% interest]**

The Table extracted above is the revised one, revised vide notification no.42/23/10-P. & P.W. (G) dated 09.11.2010 w.e.f. 01.01.2006. The pre-revised table which was effective from 1<sup>st</sup> March 1971 was "based on a rate of interest of 4.75 per cent p.a.". It may be noted at this juncture that on a comparison of the two Tables, the commutation factor got reduced from 9.81 to 8.194 for those aged 61 years at next birthday. In terms of percentage, there is reduction in commuted amount to the extent of 16.5%.

**1.5** More or less similar rules of commutation prevail in almost all the States.

**1.6** The Commutation factor as mentioned in the table above takes into account the following:

- a) longevity of life in number of years which is computed using the mortality table called LIC (94-96) ultimate;
- b) interest @ 8%; and
- c) the risk factor (which has not been specifically stated in the table).

**1.7** In the revised Table noted above, the commutation factors have been revised downwards (from 9.81 to 8.194 for the age of 61 at next birthday) and the quantum of interest has been substantially increased from 4.75% to 8%. The lowering of commutation factor from 9.81 to 8.194 from the age of 61 years at next birthday has resulted in reduction of commuted amount to the extent of 16.5%.

**1.8** The commutation amount is calculated<sup>7</sup> in the following manner:

Lumpsum Payable	=	Commutation Factor offered for commutation (as applicable depending on the age next birthday)	x	12	x	Amount of Pension (portion of the pension to be commuted)
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**Illustration :**

A Judicial Officer drawing pay in Level J-7 of this Commission’s Pay Matrix (Table-I at page 71 Vol. I of part I of the Report)/Government Officer drawing pay in Level 15 of Pay Matrix under VII CPC, @ Rs.2,11,300/- per month at the time of retirement on attaining the age of 60 years who opts to commute 50% of his pension.

**Commutation amount on the basis of pre-revised table:**

- 1. Last drawn pay Rs. 2,11,300/-
- 2. Basic/Gross Pension Rs. 1,05,650/-  
(50% of last drawn pay)

<sup>7</sup> Section 24 item 12 (Commutation of Pension), para 9 of Swamy’s Handbook 2020

3.	Commutation (maximum to the extent of 50% of basic/gross pension)	Rs. 52,825/-
4.	Commutation factor (on 'years of purchase' basis as prescribed in the table under the CCS(Pension) Rules, on retiring at the age of 60 years)	9.81
5.	Commutation Amount (Rs. 52825 x 9.81 X 12)	Rs. 62,18,559/- say 62,18,600/-

**Commutation amount on the basis of revised table:**

1.	Last drawn pay	Rs. 2,11,300/-
2.	Basic/Gross Pension (50% of last drawn pay)	Rs. 1,05,650/-
3.	Commutation (maximum to the extent of 50% of basic/gross pension)	Rs. 52,825/-
4.	Commutation factor (on 'years of purchase' basis as prescribed in the table under the CCS(Pension) Rules, on retiring at the age of 60 years)	8.194
5.	Commutation Amount (Rs. 52825 x 8.194 X 12)	Rs. 51,94,176/- say 51,94,200/-

**Difference :**

Commutated amount as per <b>pre-revised</b> table	Rs. 62,18,600/-
Commutated amount as per <b>revised</b> table	<u>Rs. 51,94,200/-</u>
Difference	<u>Rs. 10,24,400/-</u>

Percentage change  $\frac{10,24,400}{62,18,600} \times 100 = 16.473\%$

$$\text{Percentage change } \frac{10,24,400}{51,94,200} \times 100 = 19.72\%$$

P.N. : The commutation factor is as per the commutation table relevant to the age next birthday.

It shows that the commutation amount based on **revised** table is 16.473% less than the commutation amount based on **pre-revised** table. The other way round we can say that the commutation amount based on **pre-revised** table is 19.72% more than the commutation amount based on **revised** table.

**1.9** It is noticed by the Commission that the actual amount of commutation sanctioned by the Government purportedly based on the Table works out to be less than the Net Present Value/Discounted Value of Commutation.

**1.10** In this context, we would like to refer to the information made available by **the Institute of Actuaries, Navi Mumbai** engaged in publishing and updating mortalities table from time to time in association with the insurance industry vide e-mail dated 27.08.2020 in reply to the query raised by the Commission vide letter dated 20.07.2020. The Institute of Actuaries has clarified that the value of Re.1 per annum, payable annually for 15 years @ 8% per annum interest, without consideration of mortality, death benefits or other benefits would be 8.56, meaning thereby that the lumpsum value of Re.1 payable annually for 15 years discounted by interest @8% per annum is Rs. 8.56. That is to say, the commuted value of pension taken at the age of 60 years is less than the Net

Present Value (NPV)/ discounted value, the commutation factor being 8.194 and Net Present Value being 8.56.

**1.11** To explain further, let us take the example as given in para 1.8 above:

Commutated portion of pension per month	Rs.52,825/-
Annual amount	Rs.52,825 x 12 = Rs.6,33,900/-
Commutated value of Pension	Rs.633900 x 8.194=Rs. 51,94,176/-

The Net Present Value (NPV)/discounted value of Rs.6,33,900/- paid annually for 15 years @ 8% interest is Rs.54,25,850/- (calculated with the help of Net Present Value Calculator). Accordingly, the commuted value of pension i.e. Rs.51,94,176/- is less than the Net Present Value of Pension i.e. Rs.54,25,850/- by Rs.2,31,674/- (Rs.54,25,850 – 51,94,176). The reason for commutation value being less by Rs.2,31,674/- than the Net Present Value is not known, may be, it is on account of considerations of risk factor involved before the commutation amount is recovered in full.

**1.12** On Commutation, there is reduction in the amount of monthly pension, which becomes operative from the date of receipt of commuted value by the pensioner.

## **II. RESTORATION OF COMMUTED PENSION**

**2.** Presently, the restoration of commuted pension takes place after a period of 15 years from the date of commutation. Whether the 15 year period is reasonable or not and whether prescription of less number of years would be proper and appropriate is the question that has engaged the attention of this Commission.

**2.1** The Commission had addressed a letter to the Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances and Pensions on 17.07.2019 requesting to furnish the basis on which period of 15 years has been fixed for restoration of pension. In the reply dated 29.07.2019, the Department of Pension & Pensioners' Welfare has stated :

The 15 year period for restoration of commutation of pension was decided by the Supreme Court vide its judgment in WP No. 3958-61 of 1983 Common Cause Society & Ors. vs. UOI in 1986. Accordingly, this Department issued an OM 34/2/86-P&PW dated 05.03.1987.

**3.** The Supreme Court in *Common Cause-Registered Society and others v UOI* (1987) 1 SCC 142 in para 5 of the judgment observed:

"5 : The petitioners have contended that the commuted portion of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump-sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation – (1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15- year formula so far as civilian pensioners are concerned."

**3.1** Further, the Supreme Court, in para 9 of the judgment observed:

"9 : In dealing with a matter of this nature, it is not appropriate to be guided by the example of life insurance; equally unjust it would be to adopt the interest basis. On the other hand, the conclusion should be evolved by relating it to the "years-of-purchase" basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15-year rule. ...."

**4.** In para 136.9 of the report, the V CPC has observed thus as regards the restoration of commuted pension:

"...Apart from the fact that the commuted value is not fully adjusted in five or ten years, it would be incorrect, in our view, to restore the commuted portion without taking into account the element of interest, which, in any case, is levied only at the concessional rate of 4.75 per cent per annum."

In the same para, the Commission noted the observations of the Supreme Court in the Common Cause case quoted in para 3.1 above.

**4.1** In the year 1997, the V CPC recommended the restoration of the commuted portion of pension after 12 years instead of 15 years. Para 136.10 is extracted below:

"As mentioned earlier, the commuted value of pension receivable currently by an employee retiring at the normal age of 58 years is equal to 10.46 years' purchase. We have, however, separately, recommended that the age of superannuation be raised from 58 to 60 years. Consequently, the commutation value in respect of employees superannuating at the age of 60 years and commuting a portion of pension within a period of one year would be equal to 9.81 years' purchase. After adding thereto a further period of two years for recovery of interest in terms of the observations of the Supreme Court, **it would be reasonable to restore the commuted portion of the pension after 12 years, instead of 15 years as at present. We recommend accordingly.** In arriving at this decision, we have also taken note of the fact that several State Governments, such as Kerala, Madhya Pradesh, Orissa and Punjab, now permit restoration after a similar period of 12 years."

(emphasis added)

**4.2** This recommendation of V CPC however, did not find favour with the Central Government, for reasons which are not known.



**5.** It may be mentioned at this juncture that in the State of Kerala the restoration period has been allowed to be 12 years from the year 1971 onwards.

**5.1** Rule 6A of the Kerala Pension (Commutation) Rules provide for restoration of commuted portion of pension. It reads:

“6A(1)The commuted portion of pension shall be restored from the first of the month following the month in which a period of twelve years elapses from the date of commutation, i.e., the date of reduction in pension after commutation in cases where commutation is done at retirement at the age of 55, and in other cases the term for restoration shall be determined with reference to the commutation factor (rounded) in each case.

(2) No Pensioner shall be entitled to commute his Pension, again on the ground that the commuted portion has been restored to him.”

**5.2** Rule 6A thus provides that the commuted portion of pension shall be restored from first of the month following the month in which a period of 12 years elapses from the date of Commutation where commutation is done at retirement at the age of 55 years and in other cases the term for restoration shall be determined with reference to the commutation factor (rounded) in each case. It means that a person who retires at the age of more than 55 years, the restoration of commuted pension shall take place before the expiry of 12 years.

**5.3** As per Commutation Table, Annexure III to the Kerala (Pension Commutation) Rules, the commuted portion of pension stands restored on the expiry of 10 years for retirees at the age of 60 years (the factor being 9.81 and rounded off to 10).

**6.** Rule 10-A of the CCS (Commutation of Pension) Rules 1981 (inserted vide notification dated 09.11.2010) provides that the commuted amount of pension shall be restored on completion of 15 years from the date of reduction of pension

on account of commutation having become operative in accordance with Rule 6. Whether there are weighty reasons for retention of 15 years for restoration of commuted pension is not clear.

**7.** Before proceeding further, we would like to refer to the judgment of Division Bench of Delhi High Court in *Forum of Retired IPS Officers (FORIPSO) v UOI* 2019 SCC ONLINE Del 6610 decided on 17.09.2019, wherein it was held that in exercise of powers of judicial review, the period of restoration of commuted pension as adopted by the Government cannot be faulted, especially in view of the judgment of the Supreme Court referred to earlier.

**7.1** It was observed at para 17 :

**"17. Pension, Commutation of pension etc., are policy matters, which are examined and decided on the basis of recommendations of the Pay Commissions by the authorities."**  
(emphasis added)

**8.** At the Consultative Conferences, it has been represented that there is every justification for reducing the period **from** 15 years **to** 10 to 12 years and that the 15 years period prescribed long back is too long in view of the present scenario of increased life expectancy resulting in reduction of risk factor and falling bank interest rates.

**9.** There can be no denial of the fact that commutation has its own advantages for the pensioners because a lumpsum amount is available. From the point of view of the Government, interest on the lumpsum amount made available to the pensioner is a factor to be taken into account. The risk factor is another relevant aspect that goes into the estimate of recovery period. That means, if the

pensioner dies before complete recovery of the commuted amount (lumpsum paid to him), the Government will not be able to recover the amount commuted in full. At the same time, it needs to be noted that the liability to pay pension ceases and the family pension payable thereafter is much less. Be that as it may, the risk factor has to be viewed in the light of improved longevity of life especially of those in service and other professions who have in addition to the salary income the benefit of assured and qualitative medical facilities. The instances of Judicial Officers and other Government servants in higher income bracket dying before the age of 75 years are quite few in number. Even the commutation table based on LIC 1994-96 Ultimate (extracted above) adopted by the Government of India w.e.f. 01.01.2006 for the purpose of arriving at the commutation amount proceeds on the basis of longevity to the extent of additional 18 years. Whereas the superannuation is at the age of 60 years, the longevity is upto 78 years. In spite of this, some allowance towards unforeseen contingencies needs to be provided, though in practical terms, the cases of non-recovery of full amount with interest would be very limited.

**9.1** As is evident from the Commutation Table in para 1.4 above, the commutation factors in the Table are based on the longevity and the interest rates. In recent times, both these elements have undergone a change. The longevity has improved and the interest rates have steeply fallen.

**9.2** As noted earlier the **Institute of Actuaries of India, Navi Mumbai** had made information available vide e-mail dated 27.08.2020 (in response to this Commission's request dated 20.07.2020), wherein the estimated life span of a

person aged 60 years in terms of table LIC (94-96) ultimate, (the basis of Commutation Table in para 1.4 above) is stated to be approximately 18 years and in terms of table LIC (96-98), it is 21 years. It means that a person's expected life is 78 years in terms of table LIC (94-96) Ultimate and 81 years in terms of table LIC (96-98) Ultimate.

**9.3** To a query raised by the Commission "Whether and to what extent these tables have bearing on the restoration period for the commuted pension", it was clarified as follows:

The factor itself does not have a bearing on the restoration period. The restoration period would always be determined by the rules of the scheme. However, one should be aware whether the commutation factors reflect the pension payment period, restoration period and other attributes of the pension that is being exchanged for the lump sum.

A simple example is if a 15 year period is being commuted (i.e. full pension benefit is restored after that) then a commutation factor should consider the value of a 15 years' worth of pension only. As an example, the value of a flat 1 Rs. per annum, payable annually, payment for 15 years at 8% interest, without consideration of mortality, death benefits or other benefits, would be 8.56.

**9.4** Further this Commission has sought information from the office of the **Registrar General, India, VS-SRS Division, Data Dissemination Unit, New Delhi**. The contents of the reply dated 24.08.2020 received are extracted here under:

"SRS Based Abridged Life Tables" which contains the estimates of Life Expectancy at various ages based on five year moving average data. The information sought by you is as follows:

<b>Expectation of life at age 60 years by sex, India, 2011-15 to 2013-17</b>				
Period	Mid-year	Total	Male	Female
2011-15	2013	18.0	17.1	18.9
2012-16	2014	18.1	17.3	18.9
2013-17	2015	18.1	17.4	18.9

Website : [www.censusindia.gov.in/SRSpublications](http://www.censusindia.gov.in/SRSpublications)

**9.5** The Government is legitimately entitled to get adequate interest on the lumpsum amount released by way of commutation. There has been a gradual and steep fall in the interest rate. The interest rate in respect of Government bonds and securities has been on the decline when compared to the past. On the Government bonds/securities, the interest which earlier used to be 8% to 9% is now only 5% to 6%. Even when the States get advances from Central Government to overcome deficit finances, the rate of interest paid on such borrowings is much less than 8%. Further, the interest rates on fixed/term deposits offered by Public Sector and the Private Sector Banks for Senior Citizens (aged 60 years and above) is between 5% and 6% per annum at present, though it used to be 8% or more earlier. Moreover, the home loans are now available at interest rates less than 7% (HDFC-6.7%, LIC Housing 6.9%, SBI – 6.7%, DHFC-6.5%).

**10.** Viewed from any angle, the Commission is of the *prima facie* view that the time of restoration of commuted value of pension is too long and a fresh look has to be taken in view of the long passage of time. It is axiomatic that the Government should not stand to gain or lose in the transaction which is basically in the nature of welfare measure. The period of restoration of commuted pension shall be such that the Government shall be able to recover the amount released in lumpsum with reasonable interest and the period of restoration determined shall not be such as to result in profit to the Government. The fact that the pensioner gets advantage in the form of lumpsum amount shall not be stretched too far.

**11.** The Commission would like to amplify its prima-facie view that the period of restoration of full pension needs to be reduced by referring to the following **illustrative example**:

A Judicial Officer drawing pay in Level J-7 of this Commission's Pay Matrix/  
Government Officer drawing pay in Level 15 of Pay Matrix under VII CPC, @  
Rs.2,11,300/- per month at the time of retirement on attaining the age of 60 years:

1.	Last drawn pay	Rs. 2,11,300/-	
2.	Basic/Gross Pension (50% of last drawn pay)	Rs. 1,05,650/-	
3.	Commutation to the extent of 50% of basic/gross pension	Rs. 52,825/-	
4.	Commutation factor (on 'years of purchase' basis as prescribed in the table under the CCS(Pension) Rules, on retiring at the age of 60 years)	8.194	
5.	Commutation Amount (Rs. 52825 x 8.194 X 12)	Rs. 51,94,176/- say 51,94,200/-	<b>(A)</b>
6.	<sup>8</sup> Interest	Rs.17,19,696/-	<b>(B)</b>
7.	Total (A) + (B)	Rs.69,13,896/-	<b>(C)</b>
8.	Recovery of commuted amount (Rs. 52,825/- pm x 12)	Rs. 6,33,900/- per year	<b>(D)</b>
9.	Period prescribed for restoration of commuted pension	15 years	
10.	Total amount recovered in 15 years	Rs. 95,08,500/-	<b>(E)</b>

<sup>8</sup> Apparently the Govt. is calculating interest @8% on the commuted amount as seen from the commutation table above vide para 1.4 page 3.

In any case it would be appropriate that the Government should be able to recover the amount with interest at a reasonable rate.

The details of interest calculation @8% and the recovery of commutation amount with interest thereon and the period by which it is recovered is indicated below in para 12.

(Rs. 6,33,900 x 15)

11. Period of recovery of the commuted amount with interest (C ÷ D) 69,13,896/- ÷ 6,33,900/-  
(C) (D)  
10.906 years  
(130.83 months)

12. The detailed calculation as to the commutation amount, interest thereon and the recovery period is as under:

S. No. Months	Principal O/s at the beginning of the month	Principal payment per month	Principal outstanding at the end of the month	Interest due per month
	(A)	(B)	(A-B) = (C)	(D)
1.	51,94,200	52,825	51,41,375	34,628
2.	51,41,375	52,825	50,88,550	34,276
3.	50,88,550	52,825	50,35,725	33,924
4.	50,35,725	52,825	49,82,900	33,572
5.	49,82,900	52,825	49,30,075	33,219
6.	49,30,075	52,825	48,77,250	32,867
7.	48,77,250	52,825	48,24,425	32,515
8.	48,24,425	52,825	47,71,600	32,163
9.	47,71,600	52,825	47,18,775	31,811
10.	47,18,775	52,825	46,65,950	31,459
11.	46,65,950	52,825	46,13,125	31,106
12.	46,13,125	52,825	45,60,300	30,754
13.	45,60,300	52,825	45,07,475	30,402
14.	45,07,475	52,825	44,54,650	30,050
15.	44,54,650	52,825	44,01,825	29,698
16.	44,01,825	52,825	43,49,000	29,346
17.	43,49,000	52,825	42,96,175	28,993
18.	42,96,175	52,825	42,43,350	28,641
19.	42,43,350	52,825	41,90,525	28,289
20.	41,90,525	52,825	41,37,700	27,937
21.	41,37,700	52,825	40,84,875	27,585
22.	40,84,875	52,825	40,32,050	27,233
23.	40,32,050	52,825	39,79,225	26,880
24.	39,79,225	52,825	39,26,400	26,528
25.	39,26,400	52,825	38,73,575	26,176
26.	38,73,575	52,825	38,20,750	25,824
27.	38,20,750	52,825	37,67,925	25,472
28.	37,67,925	52,825	37,15,100	25,120
29.	37,15,100	52,825	36,62,275	24,767
30.	36,62,275	52,825	36,09,450	24,415
31.	36,09,450	52,825	35,56,625	24,063
32.	35,56,625	52,825	35,03,800	23,711
33.	35,03,800	52,825	34,50,975	23,359
34.	34,50,975	52,825	33,98,150	23,007
35.	33,98,150	52,825	33,45,325	22,654
36.	33,45,325	52,825	32,92,500	22,302
37.	32,92,500	52,825	32,39,675	21,950
38.	32,39,675	52,825	31,86,850	21,598
39.	31,86,850	52,825	31,34,025	21,246

40.	31,34,025	52,825	30,81,200	20,894
41.	30,81,200	52,825	30,28,375	20,541
42.	30,28,375	52,825	29,75,550	20,189
43.	29,75,550	52,825	29,22,725	19,837
44.	29,22,725	52,825	28,69,900	19,485
45.	28,69,900	52,825	28,17,075	19,133
46.	28,17,075	52,825	27,64,250	18,781
47.	27,64,250	52,825	27,11,425	18,428
48.	27,11,425	52,825	26,58,600	18,076
49.	26,58,600	52,825	26,05,775	17,724
50.	26,05,775	52,825	25,52,950	17,372
51.	25,52,950	52,825	25,00,125	17,020
52.	25,00,125	52,825	24,47,300	16,668
53.	24,47,300	52,825	23,94,475	16,315
54.	23,94,475	52,825	23,41,650	15,963
55.	23,41,650	52,825	22,88,825	15,611
56.	22,88,825	52,825	22,36,000	15,259
57.	22,36,000	52,825	21,83,175	14,907
58.	21,83,175	52,825	21,30,350	14,555
59.	21,30,350	52,825	20,77,525	14,202
60.	20,77,525	52,825	20,24,700	13,850
61.	20,24,700	52,825	19,71,875	13,498
62.	19,71,875	52,825	19,19,050	13,146
63.	19,19,050	52,825	18,66,225	12,794
64.	18,66,225	52,825	18,13,400	12,442
65.	18,13,400	52,825	17,60,575	12,089
66.	17,60,575	52,825	17,07,750	11,737
67.	17,07,750	52,825	16,54,925	11,385
68.	16,54,925	52,825	16,02,100	11,033
69.	16,02,100	52,825	15,49,275	10,681
70.	15,49,275	52,825	14,96,450	10,329
71.	14,96,450	52,825	14,43,625	9,976
72.	14,43,625	52,825	13,90,800	9,624
73.	13,90,800	52,825	13,37,975	9,272
74.	13,37,975	52,825	12,85,150	8,920
75.	12,85,150	52,825	12,32,325	8,568
76.	12,32,325	52,825	11,79,500	8,216
77.	11,79,500	52,825	11,26,675	7,863
78.	11,26,675	52,825	10,73,850	7,511
79.	10,73,850	52,825	10,21,025	7,159
80.	10,21,025	52,825	9,68,200	6,807
81.	9,68,200	52,825	9,15,375	6,455
82.	9,15,375	52,825	8,62,550	6,103
83.	8,62,550	52,825	8,09,725	5,750
84.	8,09,725	52,825	7,56,900	5,398
85.	7,56,900	52,825	7,04,075	5,046
86.	7,04,075	52,825	6,51,250	4,694
87.	6,51,250	52,825	5,98,425	4,342
88.	5,98,425	52,825	5,45,600	3,990
89.	5,45,600	52,825	4,92,775	3,637
90.	4,92,775	52,825	4,39,950	3,285
91.	4,39,950	52,825	3,87,125	2,933
92.	3,87,125	52,825	3,34,300	2,581
93.	3,34,300	52,825	2,81,475	2,229
94.	2,81,475	52,825	2,28,650	1,877
95.	2,28,650	52,825	1,75,825	1,524
96.	1,75,825	52,825	1,23,000	1,172
97.	1,23,000	52,825	70,175	820
98.	70,175	52,825	17,350	468



			<b>Total Interest Due</b>	<b>17,19,696</b>
<b>Total Payable after payment of Commuted Amount</b>			<b>17,350 + 17,19,696</b>	
			<b>= 17,37,046</b>	
99.	17,37,046	52,825	16,84,221	--
100.	16,84,221	52,825	16,31,396	--
101.	16,31,396	52,825	15,78,571	--
102.	15,78,571	52,825	15,25,746	--
103.	15,25,746	52,825	14,72,921	--
104.	14,72,921	52,825	14,20,096	--
105.	14,20,096	52,825	13,67,271	--
106.	13,67,271	52,825	13,14,446	--
107.	13,14,446	52,825	12,61,621	--
108.	12,61,621	52,825	12,08,796	--
109.	12,08,796	52,825	11,55,971	--
110.	11,55,971	52,825	11,03,146	--
111.	11,03,146	52,825	10,50,321	--
112.	10,50,321	52,825	9,97,496	--
113.	9,97,496	52,825	9,44,671	--
114.	9,44,671	52,825	8,91,846	--
115.	8,91,846	52,825	8,39,021	--
116.	8,39,021	52,825	7,86,196	--
117.	7,86,196	52,825	7,33,371	--
118.	7,33,371	52,825	6,80,546	--
119.	6,80,546	52,825	6,27,721	--
120.	6,27,721	52,825	5,74,896	--
121.	5,74,896	52,825	5,22,071	--
122.	5,22,071	52,825	4,69,246	--
123.	4,69,246	52,825	4,16,421	--
124.	4,16,421	52,825	3,63,596	--
125.	3,63,596	52,825	3,10,771	--
126.	3,10,771	52,825	2,57,946	--
127.	2,57,946	52,825	2,05,121	--
128.	2,05,121	52,825	1,52,296	--
129.	1,52,296	52,825	99,471	--
130.	99,471	52,825	44,646	--
131.	44,646	44,646	--	--
		<b>69,13,896</b>		

The above calculations in the Table take into the account the method/procedure which the Government normally follows while extending advances i.e. the principal amount is recovered first and then the interest is calculated and recovered.

The calculations in the Table reveal that the commutation amount of Rs.51,94,200/- with interest thereon @ 8% per annum amounting to Rs.17,19,696/- (total Rs.51,94,200/- + Rs.17,19,696/- = Rs.69,13,896/-), stands recovered in 131 months i.e. less than 11 years.

However, presently the recovery continues for 15 years i.e. 180 months and a sum of Rs.95,08,500/- is recovered from the pensioner.

Excess recovery amounts to :

$$(95,08,500 - 69,13,896) = \text{Rs.25,94,604/-}$$

(E) - (C)

Amount recovered 52,825 x 180	-	Commutation amount + Interest Rs.51,94,200/- + Rs.17,19,696/-	=	Excess recovery
<b>Rs.95,08,500/-</b>	-	<b>Rs.69,13,896/-</b>	=	<b>Rs.25,94,604/-</b>

**12.1** Therefore, as calculated above, the entire commutation amount with interest @ 8% per annum stands recovered in less than 11 years (leaving apart the interest earned on monthly reduced amount of pension which is in addition thereto). In any case it would not go beyond 12 years even after providing for some unforeseen contingencies and *prima facie* no disadvantage is going to be caused to the Government as well as to the Pensioners.

**13.** At this stage, we may refer to an important piece of information that has come to the notice of the Commission as contained in the communications exchanged between the Forum of Retired IPS Officers (FORIPSO) and the Department of Pension and Pensioners' Welfare. In reply to the letter addressed to the Secretary FORIPSO, Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances & Pensioners, Govt. of India in letter no. F.No. 42/1/2014-P&PW(G) dated 06.03.2014, stated thus:

Although the commuted portion is recovered in 12 years, Supreme Court directed restoration of commuted value after 15 years observing that two advantages were forthcoming out of commutation: (1) availability of lump sum amount and (2) risk factor

The Government of India, Department of Pension & Pensioners' Welfare has thus accepted broadly that the commuted portion is recovered in 12 years.

**13.1** Further, in reply to RTI query from a retired IPS Officer, the Department of Pension & Pensioners' Welfare, in its letter no. F.No.42/6/2014-P&PW(G) dated 07.04.2014, clarified thus:

- (1) DoPPW has recommended to the Finance Ministry/Deptt. of Expenditure to reduce the period of restoration of commuted pension.
- (2) The Department of Expenditure did not concur to the DoPPW's proposal dated 25.10.2012 for reducing the period of restoration of commuted pension. Department of Expenditure also suggested for a study on the commutation table by an expert institution i.e. IRDA.
- (3) DoPPW recommended to reduce the period from 15 years to 13 years.
- (4) The period of 15 years has been decided by the Supreme Court issued by order no. 34/2/86-P&PW dated 05.03.1987.

P.N. : Instead of words "issued by order no.34/2/86-P&PW dated 05.03.1987" the correct wording is "and the Department issued order no.34/2/86-P&PW dated 05.03.1987".

**14.** As stated above, the V CPC had recommended restoration of Commuted Pension after a period of 12 years, however the same was not accepted by the Central Government at that point of time without disclosing the reasons.

**15.** The VI CPC in its Report of March, 2008 dealt with the subject under the head "Recommendations relating to Commutation" in paragraphs 5.1.34, 5.1.35 and 5.1.36 of the Report. At para 5.1.34 the judgment of the Supreme Court has been summarized. Para 5.1.34 reads:

"Earlier, the amount of pension commuted was not restorable. Consequently, a pensioner was eligible to draw only the commuted amount of pension for the remainder of the retired life. The position changed with effect from April 1, 1985 on account of judgment passed in December, 1986 by the Supreme Court in Writ Petitions No. 3958-61 of 1983. In this judgment, the Supreme Court had directed restoration of the commuted value of pension once the commutation amount along with the interest element thereon was recovered fully. Accordingly, orders were issued for restoring the commuted amount of pension after 15 years. These orders were made effective retrospectively from April 1, 1985."

**15.1** Then, the VI CPC referred to the demands for reducing the period of restoration of full pension at para 5.1.35 and observed thus:

"...As mentioned earlier, the Fifth CPC had recommended such restoration after 12 years. The Fifth CPC had simultaneously recommended revision of the commutation table that was last revised in March, 1971. The commutation table is based on the mortality rates then extant amongst Government pensioners and a concessional rate of interest of 4.75% per annum. Department of Pension and Pensioners Welfare had considered the issue of revision of the current commutation table many times. These reviews revealed that whereas the mortality rates had not increased significantly, the rates of interest had become much higher. Another factor which has to be considered in any revision is that the commutation is now restored after a period of 15 years. Hence, any improvement in the age of life expectancy of Government pensioners beyond 15 years will cease to have any effect on computation of the commutation value. **The present commutation table is more advantageous to the retiring employees and till the time, the commutation table is suitably revised to present the correct picture, there may not be any justification for decreasing the period of restoration.** The Commission had commissioned the Centre for Economic Studies and Policy, Bangalore for evolving a new commutation table keeping in view all the relevant factors. This table is given in Annex 5.1.2 of the Report. The Government should modify the commutation table being used for purposes of commuting pension, accordingly. All future cases of commutation of pension should be considered as per the revised commutation table annexed to the Report which may be revised periodically by the Government keeping in view the interest rates and the mortality table. Since the commutation under the proposed scheme will be in consonance with the prevailing market rates of interest and the mortality factor, it should be possible to outsource the entire process of making payment on this account..."

(emphasis added)

**15.2** Then follows the conclusion regarding restoration period at para 5.1.36 which reads:

"In view of the aforesaid, the Commission does not propose any change in the maximum percentage of commutation allowed or in the period of restoration."

**15.3** The Commission (VI CPC) got a fresh commutation table prepared by taking the help of an expert body and the same was adopted by the Government of India.

**16.** On perusal of the observations of the VI CPC in the above paragraphs i.e. 5.1.35 and 5.1.36, this Commission is of the view that the revised

commutation table suggested by the VI CPC does not lead to the necessary conclusion that the period of restoration should be after 15 years. In this context, we would like to point out that the Table annexed to the report of VI CPC and adopted by the Government of India w.e.f. 01.01.2006 is only for quantifying the lumpsum amount qualifying for commutation based on the table. The same has been worked out by the commutation factor referred to as 'number of years of purchase' vis a vis 'the age of superannuation'. *Prima facie* it appears that it does not take within its fold the restoration aspect i.e. the period of restoration of full pension. However, as already noticed, the VI CPC has reached the conclusion that in view of the Commutation Table formulated by it, no change in the period of restoration is required. The nexus between Commutation Table and the restoration period has not been made clear. In other words, it is not clear as to how the conclusion as to the period of restoration has been drawn from the Commutation Table.

**17.** In any case, as we observed earlier, there is a need to have a fresh look as regards the period of recovery of the commuted value of pension notwithstanding what the Hon'ble Supreme Court observed more than three decades ago and the conclusion of VI CPC recorded 12 years back. It is not known whether any exercise was undertaken to have a relook at restoration by VII CPC because there is no mention of Commutation factor and restoration in the VII CPC report. Unless the relevant particulars are forthcoming and the basis is disclosed in detail by the Government, the Commission is not in a position to make a definite recommendation in this regard.

**18.** Though the Commission is not equipped with full data to reach a definite conclusion, based on the study of Commission and informal consultations held with experts, the Commission's *prima facie* view is that restoration should take place after 12 years, if not earlier. The Government of India's stand based on the observations of the Hon'ble Supreme Court in the year 1986 needs to be further examined by the Hon'ble Court at this point of time.

**18.1** In the light of above discussion, while the Commission does not express a firm view as regards the reasonableness of the existing rule regarding the period of restoration, the Commission feels that the issue needs to be revisited and the Government of India may be called upon to place the material before this Hon'ble Court which justifies the conclusion that the period of 15 years for restoration is reasonable and the situation is no different even now. Of course, in resolving this issue, mathematical accuracy is not expected. Diverse factors of relevance enter into the arena of consideration, some of which we have indicated earlier. The present day scenario as contrasted with the situation existing three decades ago has to be necessarily kept in view. Therefore, it is suggested that the issue may be decided by the Hon'ble Supreme Court after the stand of the Government of India is made known with all the relevant particulars.

**Conclusion:**

- i. Restoration period of 12 years suggested by V CPC appears to be more than adequate. Infact as per the workings given by the Commission supra, it is seen that the lump sum paid in lieu of commutation stands recovered with interest rate of 8% p.a. within 11 years. Even after giving due allowance to unforeseen contingencies, prima facie, it is reasonable to conclude that the restoration ought to take place on the expiry of 12 years and not beyond that.
  
- ii. Prima facie it appears that the judgment of Hon'ble Supreme Court rendered in the year 1986 [(1987) 1 SCC 142] has lost its relevance in the present day context and cannot be taken as a binding precedent for all time to come. There are certain general observations which were primarily meant to give a quietus to the issue of commutation at that point of time, keeping in view the offer made by the Central Government for the first time to confer the benefit of commutation and restoration of full pension after a certain period.

- iii. The issue regarding the restoration period needs to be examined *denovo* after issue of notice to Government of India (Department of Pension and Pensioners' Welfare) and on consideration of the material placed before the Hon'ble Court.

**\*\*\*End of the Report\*\*\***

**SHRI R. BASANT**  
Former Judge High Court of Kerala  
MEMBER

**JUSTICE P. V. REDDI**  
Former Judge Supreme Court of India  
CHAIRMAN

**SHRI VINAY KUMAR GUPTA**  
District Judge, Delhi  
MEMBER-SECRETARY