A NOTE FROM APBRF ON SUPREME COURT JUDGEMENT OF 100% DA NUETRALISATION CASE

We submit here with the points to be considered for further course of action on the Supreme court judgement on Pre-2002 retirees 100% DA case.

Para4 Page 3:

Pension Regulations of Union Bank of india was referred which were amended to filing of SLP:

They must consider the united bank of India Pension regulations but bot Union Bank of India which were amended after filing of SLP. In page 7 under para 5 they are quoting amended Regulations of Regulation 37 which may be studied.

Para 10 page 15:

It was stated that circulars 01-04-2008,01-08-2008 and 01-07-2010 were submitted in support of the claim for the relief under in terms of para 6 of the settlement dt.26.10.1193.

The fact is vide circulat dt.01-04-2008 RBI has neutralized DA to pre 2002 retirees WEF 01-03-2008 and the was modified by the circular 01-01-2010 and DA neutralization was effected from 01-02-2005.

Kolkatta High court accepted the Da neutralization is to be done as per the settlement of 29-10-1993 that is as done in RBI. We cannot find any circular dt.01-07-2010 concerning to this matter.

Para 21, Pages 34 and 35:

If Clause 7 (2) of the 9th Bipartite Settlement dated 27.04.2010 is compared with the last category of the Appendix II of the Pension Regulations, there is hardly any change in respect of retirees during the period 01.04.1998 to 31.10.2002. Thus, whatever benefit was conferred and was enjoyable by the employees who retired before November 2002 was not taken away.

We never said that any conferred benefit was taken away from us by the 9th

Bipartite Settlement.

It is unfortunate that the judges, who compared 9th BPS with Pension Regulations, did not compare Pension Settlement dated 29th October, 1993 with Pension Regulations, to find out why Clause No. 6 of the Settlement which reads:

> **"6. Dearness relief to pensioners will be granted at such rates as may be determined from time to time in line with the dearness allowance formula in operation in Reserve Bank of India."**

was not incorporated in the Pension Regulations.

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Para 22, Page 35:

Theoretically, the starting level for the retirees prior to 01.11.2002 is at a higher level of 0.24% as against the retirees after 01.11.2002. It could possibly be said that for those who are with basic pension in the region of Rs.6000/-, on the basis of a tapering formula may well, in the ultimate analysis, average to the same level of 0.18%.

The DA percentages (per slab) of 0.24 under 7th BPS and 0.18 under 8th BPS are not comparable. 0.24% is calculated on construction of Basic Pay at CPI Index of 1684 under 7th BPS; and 0.18% is calculated on construction of Basic Pay at CPI Index of 2288 under 8th BPS.

It is an unrelated argument that tapered DA under 7th BPS (from 0.24% to 0.06%) for basic pay in the range of Rs. 6,000 ultimately averages to 0.18%.

0.18% under 8th BPS has nothing to do with tapering of DA under 7th BPS from 0.24% to 0.06%

Para 23, Pages 36, 37:

But such calculation completely disregards that rate which is a flat rate applicable in case of post 01.11.2002 retirees is not 0.24% for the entire amount of basic pension but at a different level of 0.18% and the threshold requirement of quarterly average of the Index is also different. If we were to simply borrow the same rate of 0.18% in the case of retirees prior to 01.11.2002, the concerned retirees may well be at a disadvantage. For instance, the basic pension of Rs.7880/- of said Santipriya

Roy would yield a figure of Rs.14184/- with flat rate of 0.18%. It will not therefore be correct to adopt and apply the same rate as is made applicable in case of post 01.11.2002 retirees. What is prayed for is also not the same rate but the same principle, namely, flat rate be made applicable to pre 01.11.2002 retirees as well but at a rate of 0.24%.

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The DA (per slab) of 0.18% is on a higher basic pay that was fixed at CPI Index of 2288 under 8th BPS; whereas the DA (per slab) of 0.24% is on a lower basic pay that was fixed at CPI Index of 1684 under 7th BPS.

Therefore, we cannot compare 0.24% of 7th BPS with 0.18% of 8th BPS; and say retirees under 7th BPS would gain, and retirees under 8th BPS would lose if 100% DA neutralization is given to 7th BPS retirees.

'Borrowing' the rate of 0.18% from 8th BPS and applying it to 7th BPS retirees is a meaningless concept.

As rightly observed by the judges, what is prayed for by us is not application of same rate of 0.18% of 8th BPS; but application of 7th BPS rate of 0.24% uniformly to the entire basic pay.

Para 24, Page 37:

The benefit which is sought to be conferred by the tapering formula lies in the averaging which comes to near about the same quantum as is given to the post 01.11.2002 retirees.

This is a meaningless concept. 7th BPS never sought to give an average of 0.18% by tapering DA from 0.24% to 0.06%. At the time of 7th BPS, there was no figure of 0.18% at all. It came, on calculation, at the time of 8th BPS, at the CPI Index of 2288. Had the 8th BPS taken place at some other CPI Index level, the DA per slab would have been some figure other than 0.18%.

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Para 24, Page 37:

It is noteworthy that no illustration has been placed on record to submit that even with 0.18% dearness allowance those who retired after November 2002 walk away with substantially greater advantage as against pre November 2002 retirees.

It is amusing to see this statement. It does not need any illustration to show that 0.18% flat DA rate on entire basic pay under 8th BPS is a greater advantage than tapered DA from 0.24% to 0.06% under 7th BPS. If necessary, an illustration can be easily made out and shown.

We can show them an illustration how a retiree under 8th BPS would have got his pension with tapered DA from 0.18% to some lower levels.

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Para 24, Page 38:

If we adopt a flat rate of 0.24% as is being prayed for, the class of retirees who retired before 01.11.2002 will stand conferred better rate than those employees who retired after 01.11.2002. Nor can we apply a flat rate of 0.18% for them.

Applying flat rate of 0.18% to 7th BPS retirees is meaningless; and is not prayed for.

Flat rate of 0.24% for 7th BPS retirees cannot be said a **BETTER RATE.** The absolute figure of 0.24% may look higher. But, as stated above, these rates are not comparable in absolute terms. They must be read along with the levels of basic pay under the two settlements.

Flat rate of 0.24% for 7th BPS retirees only brings them on par with 8th BPS retirees; of course, not in terms of amounts, but in terms of equity and natural justice. That is what we are paying for.

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Para 24, Page 38:

Both classes are distinct and do not form a homogenous group. It is not a case of creating a class within a class.

It is not correct to say that retirees under 7th BPS and 8th BPS do not form a homogenous group. This is clearly against the spirit of ***Nakara*** case.

Para 24, Page 38:

It would be extremely difficult and hazardous to adopt a flat rate as is sought to be projected.

There is no difficulty or hazard in adopting a flat rate of DA for 7th BPS retirees. The judges have not elaborated the basis for calling it 'extremely difficult and hazardous'.

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Para 25, Pages 38, 39:

…the decision of this Court in ***D.S. Nakara*** (supra) is one of limited application and there is no scope for enlarging the ambit of that decision to cover all schemes made by the retirees or a demand for an identical amount of pension irrespective of the date of retirement.

We are not asking for 'identical amount of pension irrespective of the date of retirement'. This is a sweeping and damaging statement. We are only asking for application to us of the same formula being applied to 8th BPS retirees.

Nakara case clearly states that although new schemes of benefit cannot be claimed by past retirees, any improvements in the existing schemes shall be made equally applicable to past retirees also.

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Para 25, Page 39:

The settlement has to be taken as a package deal and it would be impossible to hold certain parts good and acceptable while finding other parts to be bad.

By saying that the settlement is a package deal, it cannot be concluded that the settlement is beyond any correction.

For example, the provision that basic at 1616 only ranks for pension was found to be unfair; and the same was corrected by the Supreme Court. The concept that 'the settlement is a package deal' did not stop the court from correcting this unfairness.

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Para 25, Page 39:
… a package deal was entered into and Rs.1288 crores per annum towards all the benefits was set apart for the benefit of the employees. Any stepping up of benefit for a section of employees is bound to inflate the figure of Rs.1288 crores per annum though that by itself is not a ground that weighs with us.

The course of bipartite negotiations and the constraint of Rs. 1288 crores set apart by banks cannot be a matter of consideration for the Court.

To fit the cost of the Settlement into the offer of IBA, discrimination cannot be played to the detriment of some people within the same class. This amounts to hitting the ***Nakara*** judgment squarely in its heart.

The Court itself does not seem to be convinced of their own statement and therefore said "… though that by itself is not a ground that weighs with us". If this was not a ground that weighed with them, they should not have made this point at all.

Para 25, Page 39:

In our view both the categories of retirees, namely, pre November 2002 and post November, 2002 stand on different footing, …

This is a sweeping remark. We never say that 7th BPS retirees and 8th BPS retirees stand on the same footing ***in all respects***. In the present context of applying the same principle for calculation of DA, they stand on the same footing, and they form a homogenous group.

Para 26, Page 40:

… the Bipartite Settlement did not create any distinction which was inconsistent with the principles laid down by this Court.

The way in which 100% DA neutralization was given by 8th and 9th BPSs for only those who retired on or after 01.11.2002, denying it to those who retired earlier, is clearly inconsistent with the principles laid down by Supreme Court in ***Nakara*** case, which said:

"The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved.

If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worse off than those who retire later."