

Provided that the condonation granted before the introduction of these Regulations shall be allowed to stand, the provision of this regulation notwithstanding.

(3) The authority which sanctions the pension may commute retrospectively periods of absence without leave into extraordinary leave.

41. Method of calculation of qualifying service - Length of qualifying service for the purposes of these Regulations is worked out by deducting from the gross qualifying service (i.e., the period from the date of commencement of qualifying service for pension, upto the date prior to the date of retirement, boy service, if any, and periods of refused leave or post superannuation leave being excluded) periods of service not qualifying for pension (i.e., periods of suspension not qualifying for pension, overstayal of leave, extraordinary leave, etc.)

42. (1) If an employee on non-pensionable establishment subscribing to the Provident Fund under the Bombay Port Trust Regulations of the Provident Fund is permanently transferred to pensionable service under the Trustees, he shall, at his option, be entitled —

(a) to continue to retain the contributory Provident Fund benefits, in which case he shall, notwithstanding the provision of any other regulations, not be entitled to any pension; or

(b) to earn pension in respect of such pensionable service, in which case, with effect from the date of his permanent transfer —

(i) he shall cease to be eligible for the Trustees' contribution to the Provident Fund whether ordinary, or special;

- (ii) the amount of contribution by the Trustees, with interest thereon, standing to his credit in the Provident Fund, shall revert to the Trustees and be credited to the Pension Fund, if any, which may be established by the Trustees or be disposed of in any other manner as decided by them; and
- (iii) he shall be entitled to count towards pension the entire continuous service on the non-pensionable establishment during which he actually subscribed to the Contributory Provident Fund.

(2) An employee shall communicate his option under sub-regulation (1) above by a letter addressed to the Chief Accountant, through the Head of the Department in which he is employed, within three months of the date of the order transferring him permanently to pensionable service; and if no such option is exercised within the period prescribed above the employee shall be deemed to have exercised his option in the manner referred to in sub-regulation (1)(a) above.

Note: An employee who has exercised, or is deemed to have exercised, his option to retain his Contributory Provident Fund benefit, under this regulation is not entitled to any pension. The option once exercised is final and cannot be revoked later on score that the Pension Regulations have been revised to the advantage of employees.

Section VII - Emoluments reckoned for Pension

43. The term "emoluments" for the purposes of these Regulations means the emoluments which the employee was receiving immediately before his retirement and includes —

- (a) substantive pay in respect of a permanent post held in a substantive capacity;

- (b) personal pay which is granted in lieu of loss of substantive pay in respect of a permanent post;
- (c) fees or commission if they are authorised emoluments of an appointment and are in addition to pay (in this case, "emoluments" means the average earning for the last six months of service);
- (d) special pay, other than a temporary special pay, attached to a permanent post, where the special pay has been sanctioned permanently and the post is held in a substantive capacity;

Note: Where certain posts in a cadre have special pay attached to them permanently, but the special pay is drawn by the person actually performing the duties of the post notwithstanding the fact that some other person is actually shown as substantively confirmed in, or officiating against, that post, the special pay attached to such post cannot be reckoned under this sub-regulation.

- (e) Save as otherwise provided in Regulation 43A, one half of:
 - (i) the difference between the total of the emoluments referred to in sub-regulations (a), (b) and (d) above and the pay actually drawn in higher officiating or temporary appointments;
 - (ii) special pay other than that referred to in sub-regulation (d) above;
 - (iii) pay drawn in temporary or officiating appointments during the period during which an employee is not holding a lien on a permanent post;
 - (iv) personal pay other than that referred to in sub-regulation (b) above.

Notes: (1) If immediately before his retirement or death, an employee has been absent from duty on earned leave or leave on full or average pay or any other leave with allowances, his emoluments for the purposes of calculating service gratuity and/or death-cum-retirement gratuity should be taken at what they would have been had he not been absent from duty.

Provided that the amount of gratuity/death-cum-retirement gratuity is not increased on account of increase in pay not actually drawn except in the case of increase occurring during the currency of —

- (a) the earned leave or leave on average or full pay not exceeding 120 days or 4 months, as the case may be, or
- (b) the first 120 days or 4 months, as the case may be, of the earned leave or leave on full or average pay exceeding 120 days or 4 months, as the case may be,

Law and that the benefit of higher officiating or temporary pay is given only if it is certified that he would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave.

- (2) "Non-practising Allowance" granted to Doctors should be allowed to count for purposes of 'emoluments' to the same extent as special pay, in other words, the "Non-Practising Allowance" shall count towards pension in full if it was received in respect of a permanent post held in a substantive capacity and to the extent of half in all other cases.
- (3) If it is certified under Note (1) above that an employee would have held in an officiating or temporary capacity a post different from the one from which he went on leave, then the officiating or temporary pay should be reckoned with reference to the post which the employee held immediately before going on leave or the post which he would have held but for proceeding on leave, whichever of the two posts is lower.

- (4) Pay drawn on foreign service is not to be taken into account for the purposes of "emoluments".

Explanation : Only increase in pay accruing due to an employee during the currency of (1) earned leave or leave on full or average pay not exceeding 120 days or 4 months, as the case may be, or (2) the first 120 days or 4 months, as the case may be, of the earned leave or leave on average or full pay exceeding 120 days or 4 months, as the case may be, may be taken into account for purpose of "emoluments" even though such increase in pay has not been actually drawn by the employee concerned. Any such increase in pay accruing (1) during the various kinds of leave as above but after the expiry of the first 120 days or 4 months, as the case may be, or (2) during the currency of any other kind of leave with allowances shall not be taken into account for the purposes of "emoluments".

- 43 A. (1) If an employee holding a permanent post in a substantive capacity —
- (a) officiating in a higher permanent post or holds a higher temporary post borne on a cadre which includes permanent posts on the same time-scale as the temporary post, continuously for not less than 5 years, and retires or dies while so officiating or holding the higher post; or
 - (b) is confirmed in such higher permanent post at any time during the last three years of his service after having officiated in that post continuously for three years or more,

his emoluments for pension in respect of the higher post for any period beyond three years' continuous service in that post shall be determined under Regulation 43 as if he held, in a substantive capacity a permanent post on a time-scale identical with that of the higher post.

(2) For computing the length of continuous service in respect of the higher post under sub-regulation (1), all kinds of leave, all periods during which an employee officiated in a permanent post or held a temporary post on an identical or higher time-scale and the time spent on deputation and foreign service shall be included; provided that it is certified that but for his proceeding on leave or serving in other post(s) or going on deputation or foreign service, as the case may be, the employee concerned would have officiated in or held the higher post.

¹[43 B. In respect of an employee retiring from service on or after (date of Government sanction), the term "emoluments", wherever used in these Regulations, means the "pay" as defined in Article 11(11) of the Trustees' Digest of Pay and Allowances, Leave and Pension Rules, 9th Edition, which the employee was receiving immediately before his retirement.

Note: If an employee immediately before his retirement/death, has been absent from duty on leave with allowances, his emoluments for the purposes of calculating service gratuity and/or death-cum-retirement gratuity should be taken at what they would have been had he not been absent from duty.

Provided that the amount of gratuity is not increased on account of increase in pay not actually drawn and that the benefit of higher officiating or temporary pay is given only if it is certified that he would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave.]

²[43 C. In the case of employees retiring from service on or after 1st January 1969 the term "emoluments" for the purpose of calculating

1 Inserted by T.R.No.1113 of 1968 (with effect from 31-12-1968)

2 Inserted by T.R.No. 806 of 1973 (with effect from 1-1-1969).

average emoluments on the basis of the last three years of service under Regulation 44 shall be as indicated below :-

- (A) Applicable to employees who have been holding during last three years of service posts carrying scales of pay of which the maximum does not exceed Rs 650.
- (i) In the case of employees other than 'A' & 'B' Category Dock Shore Mazdoors and Mopias of the Docks Department and Crane Drivers, Hydraulic, 5 & 6 tons and 35 cwt. and Crane Drivers, Electric, 5 & 6 tons of Engineering Department, the word "emoluments" for the purpose of this regulation comprises -
- (a) all payments which come within the ambit of the definition of 'pay' given in Article 11(11) of the Trustees' Digest of Pay and Allowances, 9th Edition;
 - (b) any other payments which are not covered by such definition but which come within the ambit of the definition of 'basic wages' given in Section 2(b) of the Employees' Provident Fund Act, 1952;
 - (c) Dearness Allowance in force from time to time;
 - (d) Compensatory (City) Allowance;
 - (e) Cash value of food concessions or free rations or any payment in cash in lieu of free rations or a part thereof; and
 - (f) also for employees governed by the arrangement called the Extension of the Piece-rate System of Payment, the premia paid to them over and above their normal wages, but does not include overtime and house rent allowance.
- (ii) In the case of 'A' and 'B' Category Dock Shore Mazdoors and Mopias of the Docks Department and Crane Drivers, Hydraulic, 5 & 6 tons and 35 cwt. and Crane Drivers, Electric, 5 & 6 tons of the Engineering Department, the word "emoluments", for the purpose of this regulation, comprises (a) piece-rate earnings, (b) earnings for work for which payment is made at

time rates, (c) earnings for ancillary work, (d) attendance allowance wherever payable, (e) payments for weekly days of rest, (f) payments for paid holidays and casual leave and (g) equation allowance, wherever payable. It does not include house rent allowance, overtime or any other payment or allowance, whether paid separately or as part of their other earnings, which does not come within the definition of 'pay' given in clause (i) above.

Notes:

- (1) Where quarters are allotted to employees free of rent, the letting value of such quarters or where quarters are allotted to employees at concessionary rates of rent, the value of such concession shall not be counted as "emoluments" for the purpose of this regulation.
- (2) In the case of the employees mentioned in clause (ii) above, the deduction on account of house rent allowance from their earnings shall be made at the rate applicable to their pay in the appropriate monthly scale of pay.
- (3) In respect of periods of leave of any kind taken during the period of last three years of service, emoluments mean the leave salary and allowances actually drawn by the employee in respect of such leave but these shall not include house rent allowance or any concession or any payment received by him during or in respect of such leave which is not covered by the definition of emoluments given in clauses (i) and (ii) above.

¹ (A) With effect from 1-1-1979 'average emoluments' will be worked out according to regulation 44 B.]

- (B) Applicable to employees who are holding during the last three years of service posts carrying scales of pay of which the maximum exceeds Rs 650.

The term "emoluments" shall have the same meaning as in regulation 43 B.

¹ Inserted by TR No.268 of 23-9-1980 and MOST's Notification No. FEB-52/79 of 30-9-1981 (Effective from 1-1-1973 in case of class I and class II employees and 1-1-1979 in case of class III and class IV employees).

(C) Applicable to employees who have been holding during the last three years of service posts carrying scales of pay of which the maximum does not exceed Rs 650 as well as those carrying scales of pay of which the maximum exceeds Rs 650.

(i) In the case of an employee who has been holding a post carrying a scale of pay of which the maximum does not exceed Rs 650 and is subsequently promoted in a substantive capacity to a post carrying a scale of pay of which the maximum exceeds Rs 650, emoluments shall from the date of such promotion, mean the same as in sub-regulation (B) above. Emoluments in respect of the period during which he holds a post carrying a scale of pay of which the maximum does not exceed Rs.650 shall be as in sub-regulation (A) above.

(ii) In the case of an employee holding a post carrying a scale of pay of which the maximum does not exceed Rs 650 and is promoted temporarily to a post carrying a scale of pay of which the maximum exceeds Rs 650, emoluments shall, for so long as he holds the latter post, be on the basis indicated in sub-regulation (B) above. If or when such an employee takes leave of any kind or reverts to the post previously held by him or is transferred to a post carrying a scale of pay of which the maximum does not exceed Rs 650, then from the date on which such leave commences or on which such reversion or transfer takes effect, emoluments shall be as indicated in sub-regulation (A) above.

Note: 'B' Category Shore Workers of the Books Department were brought under the Pension Regulations with effect from 1st January 1971 only.

43 D. In respect of an employee retiring from service on or after 1st January 1969 the term "emoluments" for the purposes of service gratuity and/or death-cum-retirement gratuity shall be as follows:-

(A) In the case of an employee holding in a substantive capacity a post carrying a scale of pay of which the maximum exceeds Rs.650, "emoluments" mean 'pay' as defined in Article 11(11) of the Trustees' Digest of Pay and Allowances, Leave and Pension Rules, 9th Edition, which the employee was receiving immediately before his retirement.

Note: If an employee immediately before his retirement/death, has been absent from duty on leave with allowances, his emoluments for the purposes of calculating service gratuity and/or death-own-retirement gratuity should be taken at what they would have been had he not been absent from duty.

Provided that the amount of gratuity is not increased on account of increase in pay not actually drawn and that the benefit of higher officiating or temporary pay is given only if it is certified that he would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave.

(B) In the case of an employee holding in a substantive capacity a post carrying a scale of pay of which the maximum does not exceed Rs 650 and officiating in a post carrying a scale of pay of which the maximum exceeds Rs.650 emoluments shall mean :

(a) "Pay" as defined in Article 11(11) of the Trustees' Digest of Pay & Allowances, Leave and Pension Rules, 9th Edition, which the employee was receiving immediately before his retirement/death,

or

(b) (i) the substantive pay as defined in Article 11(11) of the Trustees' Digest of Pay and Allowances, etc., 9th Edition, plus personal pay and/or special pay, if any, as defined in Article 11(13) and 11(15), respectively, of the same Digest, which the employee was drawing or entitled to draw at the time of retirement or death plus Dearness Allowance and Compensatory (City) Allowance appropriate to such substantive pay and personal pay and/or special pay, if any, (ii) the cash value of any food concession or free rations or any payment in cash in lieu of free rations or a part thereof,

whichever is more.

(C) In the case of an employee holding at the time of retirement/death a post carrying a scale of pay of which the maximum does not exceed Rs 650, emoluments shall mean -