

F.No.1/17/2011-P&PW (E)  
Government of India  
Ministry of Personnel, P.G. & Pensions  
Department of Pension & Pensioners' Welfare

Lok Nayak Bhawan,  
Khan Market, New Delhi  
Dated: 24<sup>th</sup> June, 2013

OFFICE MEMORANDUM

25 JUN 2013

Sub: Grant of family pension and gratuity to the eligible member of the family of an employee/pensioner/family pensioner reported missing – consolidated instructions - regarding.

The provisions regarding grant of gratuity and family pension to the members of families of the deceased Government servants/pensioners who were appointed on or before 31<sup>st</sup> December, 2003 and who are/were born on pensionable establishments are contained in Rules 50-54 of the Central Civil Services (Pension) Rules, 1972. The instructions regarding grant of family pension and gratuity under these rules to the eligible member of the family of an employee reported missing had been issued vide this Department's earlier office memorandum No. 1/17/86-P&PW, dated 29<sup>th</sup> August, 1986. Clarifications/amendments in this regard were issued vide OM No. 1/17/86-P&PW, dated 25<sup>th</sup> January, 1991 and 18<sup>th</sup> February, 1993 and OM No. 1/28/04-P&PW(E) dated 31<sup>st</sup> March, 2009 and 2<sup>nd</sup> July, 2010, O.M. of even number, dated 14<sup>th</sup> September, 2011 and OM No. 1/17/2010-P&PW(E), dated 2<sup>nd</sup> January, 2012.

2. A reference has been received in this Department to clarify whether in a situation where SHO states that FIR is not required to be lodged in the case of person gone missing, the eligible member of the family can be granted family pension. The matter has been examined in consultation with the Ministry of Home Affairs. Section 154 (1) of the Criminal Procedure Code mandates filing of an FIR by the Police authorities on a report received of the commission of a cognizable offence. A missing person per se does not point to commission of a cognizable offence. In view of this, cognizance of a person's disappearance can be taken by the Head of Office on the basis of an authenticated Daily Diary (DD)/General Diary Entry (GDE), filed by the Police authorities concerned, as per the practice prevalent in that State/UT.

3. It has now been decided to issue consolidated instructions in supersession of previous instructions regarding grant of family pension to the eligible members of family of the employee/pensioner/family pensioner reported missing and whose whereabouts are not known. It includes those kidnapped by insurgents/terrorists but does not include those who disappear after committing frauds/crime etc.

4. In the case of a missing employee/pensioner/family pensioner, the family can apply for the grant of family pension, amount of salary due, leave encashment due and the amount of GPF and gratuity (whatever has not already been received) to the Head of Office of the organisation where the employee/pensioner had last served, six months after lodging of Police report. The family pension and/or retirement gratuity may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

- (i) The family must lodge a report with the concerned Police Station and obtain a report from the Police, that the employee/ pensioner/ family pensioner has not been traced despite all efforts made by them. The report may be a First Information Report or any other report such as a Daily Diary/General Diary Entry.

- (ii) An Indemnity Bond should be taken from the nominee/dependants of the employee/pensioner/family pensioner that all payments will be adjusted against the payments due to the employee/pensioner/family pensioner in case she/he appears on the scene and makes any claim.

5. In the case of a missing employee, the family pension, at the ordinary or enhanced rate, as applicable, will accrue from the expiry of leave or the date up to which pay and allowances have been paid or the date of the police report, whichever is later. In the case of a missing pensioner/family pensioner, it will accrue from the date of the police report or from the date immediately succeeding the date till which pension/family pension had been paid, whichever is later.

6. The retirement gratuity will be paid to the family within three months of the date of application. In case of any delay, the interest shall be paid at the applicable rates and responsibility for delay shall be fixed. The difference between the death gratuity and retirement gratuity shall be payable after the death of the employee is conclusively established or on the expiry of the period of seven years from the date of the police report.

7. Before sanctioning the payment of gratuity, the Head of Office will assess all Government dues outstanding against the employee/pensioner and effect their recovery in accordance with Rule 71 of the CCS (Pension) Rules, 1972 and other instructions in force for effecting such recoveries.

8. The amount of salary due, leave encashment due and the amount of GPF will be paid to the family in the first instance as per the nominations made by the employee/pensioner on filing of a police report and submission of an indemnity bond as indicated above.

9. The benefits to be sanctioned to the family/nominee of the missing employee/pensioner will be based on and regulated by the emoluments drawn by him/her and the rules/orders applicable to him/her as on the last date he/she was on duty including authorised periods of leave.

10. Formats of separate Indemnity Bonds to be used in the case of missing employees, missing pensioners and missing family pensioners are available at this department's website [www.persmin.nic.in](http://www.persmin.nic.in).

Encl: As above.

कर्मिक और प्रशिक्षण विभाग, लोक नयक भवन Dept. of Personnel & Trng., L. N. Bhawan प्राप्ति और निगमन कार्यालय Receipt & Issued Section
25 JUN 2013
जारी किया/ISSUED

O/C

*Sujasha Choudhury*  
(Sujasha Choudhury)  
Deputy Secretary  
Tel. No. 24635979

1. All Ministries/Departments of the Government of India  
2. O/o The Comptroller & Auditor General of India, 9, DDU Marg, New Delhi.  
3. O/o The Controller General of Accounts, Lok Nayak Bhawan, New Delhi.  
4. Ministry of Railways, Rail Bhawan, New Delhi. (w.r.t. their OM No. F.E. III/2009/PN1/7, dated 11.03.2013).

Copy to NIC, 3<sup>rd</sup> Floor, Lok Nayak Bhawan, New Delhi, with a request to post the Office Memorandum on the website of this department.

Copy to All Desks.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

#### COMMENTS

##### Plea of self-defence

(i) The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of material on record; *Rizan v. State of Chhattisgarh*, AIR 2003 SC 976.

(ii) When the prosecution has established its case, it is incumbent upon the accused, under section 105 to establish the case of his private defence by showing probability; *Samuthram alias Samudra Rajan v. State of Tamil Nadu*, (1997) 2 Crimes 185 (Mad).

106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

##### Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

107. Burden of proving death of person known to have been alive within thirty years.—When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years.—<sup>1</sup>[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is <sup>2</sup>[shifted to] the person who affirms it.

109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.—When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

111. Proof of good faith in transactions where one party is in relation of active confidence.—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

##### Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

1. Subs. by Act 18 of 1872, sec. 9, for "When".

2. Subs. by Act 18 of 1872, sec. 9, for "on".