

THIRTY-SIXTH REPORT

OF THE SALARIES REVIEW COMMISSION

OF THE REPUBLIC OF TRINIDAD AND TOBAGO

May 18, 1995

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Review of Pensions and other Terminal benefits for office-holders within the purview of the Salaries Review Commission

Following on the submission of our Twenty-third Report in which we undertook a general revision of the salaries and other terms and conditions of service of all offices within the purview of the Salaries Review Commission, a review of pensions and other terminal benefits as they apply to certain office-holders has been undertaken in keeping with our proposal at paragraph 56 of that Report. We quote the said paragraph as follows:-

"In their submission to us, some office holders made representations concerning their existing pension arrangements which, in their view, were in need of improvement and/or amendment. In other cases, the call was for the introduction of some form of terminal benefit where no provision now exists. In our view, these issues are far from simple and proper consideration of the various claims would require actuarial evaluation and other professional advice. Accordingly, we propose to defer consideration of these matters on this occasion."

2. Since then, the Commission has had the benefit of advice from the Government's Chief Actuary, in writing and through discussions on the various submissions of office-holders. The Commission also has had the benefit of its own research into the historical background of certain of the pension schemes, for example, Act No. 24 of 1969, the Retiring Allowances (Legislative Service) Act which applies to members of the House of Representatives.

3. Our objective in this review has been to assess the existing arrangements relating to pensions and terminal benefits for the office-holders vis-a-vis the submissions made. We were also mindful of our overall objective as espoused in the said Twenty-third Report, to establish and maintain a structure of allowances/fringe benefits which will enable the office-holder to perform the functions of the office effectively and efficiently. In this regard, we recognise the significant value of pensions as part of the total remuneration package particularly in the Public Service which traditionally is viewed as a career service and therefore one which requires remuneration arrangements designed to fit long term needs.

4. Our overall assessment of the existing pension arrangements for the office-holders under consideration is that the general level of pensions currently provided is reasonable. It is our view also that the pension arrangements bear very favourable comparison with private sector pension plans. This is particularly so with respect to the rate of accrual of pension benefits, the maximum pensions provided, the non-contributory nature of the pension schemes and the privilege of certain office-holders, e.g Top Managers, to retire at age fifty-five (age fifty in certain cases) and receive an immediate pension which is not actuarially reduced.

5. With respect to the rate of accrual and maximum pensions, the general provision under private sector pension plans registered with the Board of Inland Revenue is for a rate of accrual of between 1 2/3% and 2% of pensionable salary per annum and a maximum pension of 2/3rds of final salary. By comparison, some of the offices within our purview are eligible for a rate of accrual of pensions of 2 1/2% of pensionable salary per annum and a maximum pension of 85% of final salary.

6. We have noted that many of the public sector pension arrangements are non-contributory and even where some office holders are required to pay contributions, the arrangements are non-funded, that is to say, no corresponding contributions are made by the employer and there is no pension fund in existence. In all cases, a pay-as-you-go system exists, with benefits being paid directly out of the Consolidated Fund. Recognizing the close tie of the pension arrangements for the office-holders within our purview with those applicable to public service grades outside of our terms of reference, we make no specific recommendation on this matter but merely note the opportunity which exists in the public sector for a contributory and funded pension plan.

7. The payment of an immediate pension at age fifty-five (or earlier) without actuarial reduction is a significant advantage. In contrast, in approved pension schemes in the private sector, the penalty attached to accessing pensions prior to compulsory retirement age is the provision of a pension which is reduced actuarially to take account of early payment.

8. (In reviewing those cases where certain office-holders called for the introduction of some form of terminal benefit where none exists currently,) we were guided by two main principles underlying the award of pensions, viz, firstly, that a retirement pension is provided to an employee who has given many years of service to an organization or industry, such service to be of a continuous and permanent nature and secondly, that the employee has come to an age which is considered the end of a normal working life.

9. Against this background, we have examined the submissions made by each office-holder or groups of office-holders and our findings are set out below.

MEMBERS, HOUSE OF REPRESENTATIVES

10. In his submission to us, the then Speaker of the House of Representatives stated the following:-

"(i) There should be a pension for
Members who serve one term.

- (ii) An amendment should be made to existing legislation to provide for dependants of a Member who dies in the line of duty, to receive similar benefits as if the Member had served two (2) terms or eight years and had attained the age of fifty-five (55) years."

PROVISION OF A PENSION FOR MEMBERS WHO SERVE ONE TERM

11. The Commission noted that at present the qualifying period of service for the retiring allowance under the Retiring Allowances (Legislative Service) Act, Ch 2:03 is a period amounting in the aggregate to not less than eight years. The Commission observed that that qualifying period was fixed in 1968 and evolved from the provisions contained in corresponding legislation in Barbados and Jamaica which specifies a period of eight years and nine years, respectively. It would appear that in all cases, consideration was given to the fact that a parliamentary term might not run a full five-year course.

12. In the contemporary setting we see as significant the fact that members of the House of Representatives contribute 6% of salary under the parliamentary pension scheme. By comparison, where similar levels of contribution are made in private sector pension plans, pensions vest after a period of five years service. We note also that under the current Board of Inland Revenue guidelines, it is a requirement that a pension scheme should provide for vesting after five years service in order to qualify as an approved scheme.

13. We are satisfied, therefore, that there is no justification for maintaining such a long qualifying period of eight years. Accordingly, we recommend that members of the House of Representatives should be eligible for the retiring allowance now provided under the said Act, after a minimum period of five years service.

14. In the light of the recommended reduction in the qualifying period, a question arises as to what quantum of retiring allowance would apply for service between five years and less than eight years. At present, the structure of benefits is as follows:-

- | | | | |
|-------|--|---|----------------------------------|
| (i) | For service of an aggregate of not less than 8 years. | - | 1/4 of one year's (basic) salary |
| (ii) | For two consecutive full Parliamentary Terms of not less than 9 years or for periods of an aggregate of not less than 10 years | - | 1/3 of one year's (basic) salary |
| (iii) | For three full Parliamentary Terms of not less than 13 1/2 years or for periods of an aggregate of not less than 15 years | - | 1/2 of one year's (basic) salary |

- (iv) For four full Parliamentary Terms of not less than 18 years or for periods of an aggregate of not less than 20 years. - 2/3 of one year's (basic) salary

15. On the basis of advice provided by the Government's Chief Actuary, it is recommended that the rate of retiring allowance for service between five and eight years should be as follows:-

- For service of an aggregate of not less than five years - 1/6 of one year's (basic) salary.

PROVISION FOR THE DEPENDANTS OF A MEMBER WHO DIES IN THE LINE OF DUTY.

16. We observe that the Retiring Allowances (Legislative Service) Act already makes provision for the payment of Widow's and Children's allowances in the event of the death of a legislator, such payments, however, being contingent on the legislator having served the existing required minimum period of eight years.

17. The Commission is of the view that inasmuch as the principle of providing, after a specified period, for dependants in the event of "normal" death is already accepted under the existing scheme, it is not unreasonable for the principle to be extended to the contingency of death in the line of duty, without imposing a qualifying period.

18. Accordingly, we recommend that the Retiring Allowances (Legislative Service) Act should be amended to provide allowances for the dependants of a member who dies in the line of duty, that is to say, in the course of performing official parliamentary duties, regardless of the period of time the member has served.

19. In addition, following on our recommendation for a reduction in the qualifying period of service for the retiring allowance under the Act from eight to five years, we recommend also that in cases of death, other than in the line of duty, the allowance for dependants should be provided after a minimum period of five years service by the legislator.

20. While not included in the submission made to us, we note that on the matter of dependants' allowances, the existing Act makes provision only for the widow of a deceased legislator. We consider the provision for "widow" only discriminatory and not reflective of the current trends where many legislators are female. We recommend therefore that the provision should apply to the "spouse" of a deceased legislator.

OFFICE OF THE OMBUDSMAN

21. The submission to the Commission by the Ombudsman was as follows:-

"Whatever proposals are submitted by the Judges with respect to the salary and other terms and conditions of service of a Justice of Appeal would be accepted. Whatever recommendations are made by the Commission with respect to that office, like recommendations should be made with respect to the Office of Ombudsman."

22. Embodied in that submission, is a suggestion that the Ombudsman be provided with pension arrangements similar to those applicable to Judges. However, because of the practice of filling this office by means of a contract appointment, the Commission recommends that the existing arrangement for the payment of a contract gratuity at the end of the tenure of office, should be retained. 45 7D

THE HIGHER JUDICIARY:
JUDGES (JUSTICE OF APPEAL AND PUISNE JUDGE)

23. The submission of the Judges to the Commission was as follows:-

Section 6 of the Judges' Salaries and Pensions Act (Ch. 6:02) has the effect of providing a more favourable pension to Judges who are recruited from the private sector than to those appointed from the public service because of the following:

- (i) subsection (1) provides for a minimum pension of 44 1/2% of annual pensionable emoluments and a maximum pension of 85% of annual pensionable emoluments;
- (ii) subsection (2) states that where a Judge has pensionable service, the amount of pension granted under the Act when added to the amount of any pension(s) drawn in respect of that pensionable service shall not exceed 85% of annual pensionable emoluments drawn by him at date of retirement.

- (iii) the overall effect of section 6 (of the Act) is such that the retiring Judge coming from private practice is guaranteed a minimum of 44 1/2% of salary, tax free as pension, while his counterpart who came from the public service would receive quite a smaller percentage of his Judge's salary as a tax-free pension, together with his public service pension which is subject to tax, both pensions not to exceed 85% of annual pensionable emoluments at date of retirement.

Subsection 6(2) should be repealed to allow a Judge the benefit of his full pension, free from taxation.

24. We note the concern raised with respect to the combined effect of subsections (1) and (2) of Section 6 of the Judges' Salaries and Pensions Act on benefits applicable to a Judge with previous pensionable service and it seems that, in certain instances, a Judge with previous public service may not be able to enjoy as great a proportion of the 85% maximum pension tax free as would his counterpart who came from private practice.

25. However, from a comprehensive assessment of the operation of the Judges' pension arrangements we have observed that there are certain advantages enjoyed by a person coming from the public service to take up an appointment as a Judge. These advantages are as follows:-

- (i) candidates for appointment to the office of Judge are usually selected from the Judicial and Legal Service. Members of the latter service are entitled to the accrual of five additional years of service in accordance with Section 30 of the Pensions Act, Ch. 23:52 by which provision they can earn a maximum of 35 years pensionable service. The maximum in respect of the other offices pensionable under the said Act is 33 1/3 years.
- (ii) the office of "Judge of the Supreme Court" has been designated an "approved post" under the Pensions Act, the effect of which is that an officer leaving the Public Service to take up an appointment of Judge will be entitled to receive his public service pension earned under Ch. 23:52 immediately, regardless of age.

26. We consider that the advantages outlined above are quite significant and provide adequate compensation for Judges appointed from the Public Service. Accordingly, we do not recommend any changes in Judges' pension arrangements as currently provided under the Judges' Salaries and Pensions Act, Ch. 6:02.

AUDITOR GENERAL

27. In the case of the Auditor General, the submission was as follows:-

- "1. There should be provision for a death benefit of one month's salary to the spouse in cases where the Auditor General dies in office.
2. Survivors' benefits should be provided for the spouse and dependants of an Auditor General who dies in office. Such dependants should be under the age of twenty years."

DEATH BENEFIT OF ONE MONTH'S SALARY

28. There seemed to have been an omission from the Auditor General (Allowances) Order for the payment of a month's salary to the widow or children or next of kin in the event of death of the office-holder. We note, however, that public officers are entitled to such a benefit in accordance with Section 32 of the Civil Service Act.

29. In our view, since the office of Auditor General is a public office as defined in the Constitution, the widow or children or next of kin are entitled to the benefit provided under Section 32. However, to remove any ambiguity, we recommend that the Auditor General (Allowances) Order should be amended to include such a provision.

SURVIVOR'S BENEFITS

30. We have taken account of the fact that the Auditor General's pension arrangements are the same as those for public officers under the Pensions Act, Ch. 23:52. In terms of benefits for survivors, that Act currently provides the following:-

- (i) a gratuity to dependants in the case of death, of an amount not exceeding one year's pensionable emoluments of the officer or his commuted pension gratuity if any, whichever is the greater;
- (ii) where death is due to injuries arising out of and in the course of duty, in addition to (i) above, a pension is provided to the widow, child or children and in certain cases, a mother who was wholly or mainly dependent on the officer.

31. The provision of survivor's pensions is a very costly benefit under any pension plan. Having regard to the applicability of the Pensions Act to the general body of public officers, we conclude that no special provision for survivor's benefits for the office of Auditor General should be made over and above those outlined at (i) and (ii) of paragraph 30 above.

MEMBERS OF THE INDUSTRIAL COURT

32. In their submissions, Members of the Industrial Court proposed that they should be granted pensions on the same basis as Judges of the Supreme Court and that such pensions should be exempt from income tax and any other tax.

33. At present, Members who are eligible for pension, are entitled to a maximum pension of 66 2/3% of salary, which is subject to tax. In contrast, Members of the Higher Judiciary are eligible for a minimum pension of 44 1/4% and a maximum of 85% of salary. This pension is not subject to tax.

34. We have considered the submission of the Members of the Industrial Court which, in our view is based on a previous contention that such office-holders should be regarded as being equivalent to Judges of the High Court. We addressed this issue in 1984 in a letter to the President of the Industrial Court in response to a submission made by him on the extension of a tax-free Personal Allowance (Judges Allowance) which had been specially provided to Judges of the Supreme Court, and again in 1991 in our Twenty-third Report where we concluded that although the Industrial Court is a Superior Court of Record, the office of Member of the Industrial Court cannot be deemed to be on par with that of Judge of the High Court.

35. Accordingly, we recommend that the existing arrangements provided under the Industrial Court (Pensions and Gratuities of Members) Regulations should be retained.

MEMBERS, TAX APPEAL BOARD (FULL-TIME)

36. The Tax Appeal Board has pointed out that the gratuity payable to the full-time Member of the Board has not been recorded in the relevant Circular Memoranda outlining terms and conditions applicable to the office.

37. While no provision has been made in law for the payment of terminal benefits to the Member, by virtue of decisions of Cabinet, it has been customary to provide a gratuity of 20% of total basic salary earned on completion of a term of office.

38. The Commission recommends that this provision should be included in future Circular Memoranda which deal with the terms and conditions of these office-holders.

CHIEF OF DEFENCE STAFF

39. The Chief of Defence Staff submitted that in terms of retirement benefits, the holder of that office is at a disadvantage vis-a-vis the holder of the office of Commissioner of Police. This submission has been based on the fact that under the Defence (Pensions, Terminal and other Grants) Regulations, 1968, the office holder is provided with a maximum pension of 66 2/3% of final salary while the Pensions and Gratuities Rules - Sixth Schedule to the Police Service Act, provide a maximum pension of 85% of salary to the Commissioner of Police.

40. We have examined written comments from and held discussions with the Government's Chief Actuary on these submissions. After considering these comments, it seems clear to us that the proposal of the Chief of Defence Staff has not taken full account of the differences between the superannuation arrangements for the Defence Force and those existing for the Police Service.

41. Indeed, it has been pointed out that the retirement benefits for the Chief of Defence Staff are significantly more valuable than those provided to the Commissioner of Police when the effective rates of accrual, the age from which pension becomes payable and the generous levels of widow's/children's pensions payable on the death of the Chief of Defence Staff are taken into account. For example, since the Chief of Defence Staff can receive a pension from age forty-five, compared with age fifty for the Commissioner of Police, that pension, on average, is payable over a longer period.

42. The Chief of Defence Staff also receives an additional lump-sum gratuity which is separate from his pension entitlement. On the other hand, the retirement pension of the Commissioner of Police is reduced in order for him to receive a lump-sum gratuity.

43. Based on the calculations of the Government's Chief Actuary, when comparisons are made of the existing rates of accrual, pension benefits in the Defence Force accrue at a rate of 1/40 (2.5%) of pay for each year of pensionable service (to a maximum of 66 2/3% of final pay) plus a lump-sum gratuity of 3.5 times the annual pension. When expressed in equivalent terms, the accrual rate in the Police Service is 1/53 (1.875%) of pay for each year of pensionable service (subject to a maximum of 63 3/4% of final pay) plus a gratuity of 4.17 times the annual pension.

44. With respect to the benefits payable to the widow and children of the Chief of Defence Staff on death in service or on death after retirement, these are also superior to the benefits available to the Commissioner of Police.

45. We recommend, therefore, that the existing superannuation arrangements should be retained.

COMMISSIONER OF POLICE

46. The Commissioner of Police has proposed that the maximum pension of 85% of salary should be increased to 92 1/2%.

47. From the discussions held with the Government's Chief Actuary and based on his advice, the Commission is of the view that the existing benefits are indeed generous and that there is, consequently, no need to improve them.

CHAIRMEN AND MEMBERS OF COMMISSIONS AND BOARDS

48. The Chairmen and Members of the following Service Commissions:-

Public Service Commission
Police Service Commission
Teaching Service Commission and
Statutory Authorities Service Commission

have made submissions for the payment of gratuities on the expiration of their terms of office. At present, gratuities are payable only in respect of the full-time offices of Chairman and Deputy Chairman, Public Service Commission. In the case of these office-holders, the existing gratuity is set at 20% of total basic salary earned at the end of the term of office. In their submissions, the Chairman and Deputy Chairman have proposed that the rate be increased to 25%. In the case of the other Service Commissions, the proposal has been for the introduction of a gratuity of 20% of gross salary.

49. The Commission has observed that where gratuities are paid, a rate of 20% of total basic salary earned is the established norm in the Public Service as well as the private sector. We can see no justification to increase the rate payable to the Chairman and Deputy Chairman, Public Service Commission.

50. With respect to the proposal for the introduction of gratuities to other Chairmen and Members of Service Commissions, we have noted that it has been the practice in the Public Service to provide terminal benefits only in respect of full-time service to the State. We do not recommend a change in this policy.

51. In respect of the Teaching Service Commission, in addition to the proposal for the payment of a gratuity, the Members have recommended that they be provided with a remuneration package that is comparable to that received by the Chairman and Members of the Public Service Commission. We recommend that the existing remuneration arrangements should be maintained.

TOBAGO HOUSE OF ASSEMBLY

(a) **Chairman and Deputy Chairman**

52. The members of the Tobago House of Assembly have proposed the provision of retiring benefits to the Chairman and Deputy Chairman, along the lines of the Retiring Allowances (Legislative Service) Act.

53. In our Twenty-third Report, we considered that, given the expanded role of the Tobago House of Assembly, both the office of Chairman and Deputy Chairman of the Assembly should be full-time. Consequently, the salary which we recommended at that time for the Deputy Chairman reflected this view.

54. The principle of the provision of terminal benefits for these office-holders is not without merit, given the full-time nature of their duties. However, we note that the term of office for members of the Assembly is four years, whereas that of members of Parliament is normally five years. Consequently, we are of the view that it would not be equitable to simply extend the benefits available under the Retiring Allowances (Legislative Service) Act to the Chairman and Deputy Chairman of the Assembly.

55. We recommend, instead, that these office-holders be provided with a gratuity of 20% of total basic salary earned over the term of office.

(b) Assemblymen and Councillors

56. With respect to Assemblymen and Councillors, the proposal has been for the payment of a retiring allowance which would be scaled according to the length of time an office-holder serves. At the lower end of the scale, an allowance of 1/4 of one year's salary is proposed for each year of service amounting to not less than eight years. For service of sixteen years and more, the Assembly has proposed an annual rate of 2/3rds of a year's salary.

57. We have observed that unlike the Chairman and Deputy Chairman, Assemblymen and Councillors serve on a part-time basis. Consequently, consistent with the position which we have adopted in respect of part-time office-holders on Commissions and Boards, we do not recommend the provision of terminal benefits for Assemblymen and Councillors of the Assembly.

LOCAL GOVERNMENT OFFICIALS

58. With respect to Local Government Officials, it has been proposed that pension benefits be provided to all office-holders who have served for a period of six years or more. Such benefits are to be based on the formula contained in the Retiring Allowances (Legislative Service) Act.

59. The Commission notes that no distinction is made in the proposal between the various Local Government Officials, viz, Mayors, Deputy Mayors, Chairmen of Committees, Aldermen and Councillors and Members of Regional Councils. We have been advised that despite the fact that the relevant sections of the Municipal Corporations Act, 1990, which provides for a new structure of Local Government Authorities, have been proclaimed, the actual duties and responsibilities of office-holders remain unchanged from the previous system. Consequently, we must reiterate our view which was set out in our Twenty-third Report to the effect that the only office which could be considered to be of a full-time nature is that of Mayor.

60. We, therefore, recommend that terminal benefits in the form of a gratuity be provided to Mayors only at the end of their term of office. The gratuity should be 20% of total basic salary earned over the period during which they held office.

61. As with other part-time office-holders, we do not recommend at this time, the provision of terminal benefits for any other Local Government Officials.

Dated this 18th day of May, 1995.

/s/ Leonard Williams
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Leonard Williams
(Chairman)

/s/ Edward Collier
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Edward Collier

/s/ Rowell Debysingh
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Rowell Debysingh

/s/ George Leonard Lewis
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George Leonard Lewis

/s/ Keith Ortiz
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Keith Ortiz