AGENDA ITEMS FOR 38TH MEETING OF PENSION AND EDLI IMPLEMENTATION COMMITTEE.

Date of Meeting: 08.12.2016

Time 3 PM

Venue Conference Hall, 3rd Floor,
Employees Provident Fund Organisation,
Head office, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi-66.
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Item No. 1: Confirmation of minutes of the 37th meeting of the Pension & EDLI Implementation Committee held on 28/03/2016.

The minutes of 37th meeting of Pension & EDLI implementation Committee (AnnexureA) is placed for confirmation of the committee.
Item No. 2: Action Taken Report on the 37th meeting/decision.

The scale of assurance benefits under EDLI 1976 has been increased to six lakh rupees vide notification no.- G.S.R. 543 (E) dated 24th May, 2016 in view of surplus fund available under EDLI. The assessment of the impact of the increase in benefit on the Insurance Fund can only be ascertained after five years.

In view of the above, the proposal for extending voluntary retention of membership for members who cease to be in employment at reduced rate of contribution may be re-examined after assessment of impact on Insurance Fund after five years of enhancing the limit of benefit up to Rs. Six lakhs under EDLI Scheme, 1976.
Item No. 3) Implementation of Supreme Court Orders related to Employees Pension Scheme 1995.

The matter of determination of Pensionable salary exceeding the statutory wage ceiling and exercise of option under deleted proviso to Para 11(3) of Employees' Pension Scheme 1995 was agitated before many High Courts. Hon'ble High Court of Kerala, in particular, had disposed the various petitions on similar line directing the EPFO that “the 8.33% of the employer's contribution proportionate to the salary of employees in excess of Rs.6500/- shall now be credited to the pension scheme and orders passed in accordance with law. Needless to say the interest accrued in the provident fund account to that extent also will stand transferred to the pension account. The employees shall also submit joint application along with their employer wherever the same has not been done."
The department had filed more than 10 SLPs before the Hon'ble Supreme Court against the orders passed by Hon'ble High Courts. The same have been dismissed by Hon'ble Supreme Court stating that “We do not find any legal and valid ground for interference, the special leave petitions are dismissed.” It is pertinent to mention that the Hon'ble Supreme Court of India did not deliberate upon the question of law and rules provisions of Act & Schemes in most of the SLPs.

However, in SLP no.33032-33033 of 2015 in the matter of R.C. Gupta & ors Vs RPFC, Shimla and ors, the Hon'ble Supreme Court of India has examined the provisions of EPF Scheme 1952 & Pension Scheme and passed the detailed order. The relevant excerpts of the order was informed which are as under (Annexure B):-

“10. We do not see how exercise of option under Paragraph 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under Paragraph 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under Paragraph 26 of the Provident Fund Scheme is inevitable. Exercise of option under Paragraph 26(6) is a necessary precursor to exercise of option under clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of further option under clause 11(3) of the pension scheme unless the circumstances warranting such foreclosure are clearly indicated.

11. The above apart, in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the LPA before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have
benefitted some of the employees. At best what the Provident commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employee. “

A background note with the draft circular in this regard for compliance of the Hon’ble Supreme Court order was placed before the officers for consideration and opinion in the matter in the meeting held on 23/11/2016. After going through the Supreme Court orders, background note and draft circular for compliance of the orders of the Supreme Court in the respective SLPs filed by the organisation, it was unanimously agreed to recommend to comply with the orders of the Courts, in particular, order of the Hon’ble Supreme Court in SLP no.33032-33033 in the matter of R. C. Gupta & others.

However, considering the wider implication and needing uniform compliance for all such type of cases including the petitioners and also having financial bearing on the Pension Fund, it was decided that the matter may be placed before Pension Implementation Committee, a committee formed by the CBT in respect of policy matters related to Pension and EDLI. (Copy of minutes of meeting is enclosed as Annexure C)

Proposal:-

It is proposed that the representations/options /grievances received from members of the Employees’ Pension Scheme 1995 in r/o compliance of Hon’ble Supreme Court orders are to be redressed in the following cases and manners.-

a) The member of the Employees Provident Fund Scheme 1952 and/or Employees’ Pension Scheme 1995 who have contributed on higher wages exceeding the statutory wage ceiling of Rs.6500/-.

b) The members of exempted trust exempted under section 17(1)(a) of the EPF and MP Act 1952 or relaxed under para 79 or the employees exempted under para 27 or 27A of Employees’ Provident Fund Scheme 1952 who have contributed on higher wages exceeding the statutory wage ceiling of Rs.6500/- in the Provident Fund Trust of that Establishments.

c) Any member either retired or receiving pension under Employees’ Pension Scheme 1995 and who have contributed on wages exceeding the statutory wage ceiling under EPF Scheme 1952 and/or EPS 1995.
In all the above cases, the contribution due to Employees’ Pension Scheme 95 on wages exceeding statutory limit is to be upon a joint application from Employer and Employees either diverted from the contribution in Employees Provident Fund or refunded/ remitted by Employees together with up to date interest as declared under Employees Provident fund Scheme 1952 from time to time.

In case of the members of exempted Establishment, they have to submit joint application with details of PF contribution and interest credited year wise to the PF Account along with calculation of year wise contribution to the EPS 1995 and interest to be paid by the employer/employees concerned and deposit the amount together with up to date interest.

This will be applicable only in those case where the members/pensioners have contributed on higher wages than the statutory wage ceiling of Rs.6500/- with or without exercise of option prior to the issue of notification for increase of wage ceiling to Rs.15000/- which is effective from 01.09.2014.

This is for the implementation of Hon’ble Supreme Court order by way of issuing administrative instructions to field offices of the EPFO for compliance in all similar such cases.

The committee is requested to accord approval of the proposal.
Item No. 4: Contribution exceeding wage ceiling of Rs.15000/- per month by the existing members of EPS 1995 with additional contribution of 1.16% of the wage from their provident fund account w.e.f. 01.09.2014.

Vide notification no. GSR 609 dated 22.08.2014 w.e.f. 01.09.2014 clause 4 of para 11 of the EPS 1995 was inserted with following provisions:

- The existing members as on the 1st day of September, 2014, who at the option of the employer and employees, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employees continue to contribute on salary exceeding fifteen thousand rupees per month:

Provided that the aforesaid members have to contribute at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder: Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014:

Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:

Provided also that if no option is exercised by the member within such period (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees’ Provident Fund Scheme from time to time.

As per the above provisions the time limit to exercise option of contribution exceeding Rs.15000/- wage ceiling to Employees Pension Fund has already expired on 31.08.2014. However, it has been found through the system that many of the members of the pension scheme who are continuing to contribute on higher wage ceiling exceeding Rs.15000/- per month to the pension fund @8.33% of the total wage are not contributing the additional contribution @1.16% of the wage on the salary exceeding Rs.15000/-. As such they are contributing at lower rate than required under the revised scheme to get benefits of the pension scheme as compared to the members who are contributing on wage ceiling up to the 15000/- per month as in their case 1.16% contribution is being paid by the Central Government.
The matter has been examined based on the fact that if such members are not informed and proper action not taken well in advance while they are members of the pension scheme, they may claim for pension as per the provision of the scheme although without contributing at the rate as per provisions of the scheme.

To obviate such disputes in future, the following proposal is placed for consideration.

Proposal: -

Those members of the pension scheme who are currently contributing to pension fund exceeding the wage ceiling of Rs.15000/- per month, irrespective of the fact whether they have submitted joint option as per the proviso of para 11 (4) of the pension scheme or whether they are paying additional contribution at the rate of 1.16% of the wage as per the same proviso, should be deemed as to have consented and given option for contribution exceeding the wage ceiling of Rs.15000/- per month @ 8.33%. Additional contribution of 1.16% of the wage exceeding Rs.15000/- have to be paid by such members from their provident fund as per the proviso of para 11 (4) of the EPS, 1995. In all such cases where contribution @ 8.33% of the wage exceeding the ceiling of Rs.15000/- per month has been made, additional contribution of 1.16% along with interest as applicable to the provident fund from time to time shall be diverted from provident fund account of such members to the pension fund. Calling of option from the members contributing on higher wage exceeding the ceiling of Rs.15000/- per month and/ or additional contribution at the rate of 1.16% on the wage exceeding Rs.15000/- shall be dispensed with.

An opportunity may be given with a time limit of six months to those members of the pension scheme who do not want to contribute on higher wage exceeding Rs.15000/- @ 8.33% with additional contribution at the rate of 1.16% of the wage exceeding Rs.15000/-, to opt out of higher contribution. In such cases, the contribution paid beyond the wage ceiling of Rs.15000/- shall be diverted from the pension fund to their provident fund account along with interest as applicable to provident fund from time to time. This will be a case of ‘negative option’ for non-contribution exceeding the wage ceiling of Rs.15000/- w.e.f. 01.09.2014.
The above proposal is placed before Pension Implementation Committee for consideration and approval for forwarding the matter to the Ministry of Labour & Employment for necessary amendment in the Employees' Pension Scheme 1995 under para 11 of EPS 1995.
Item No. 5: increase in cessation of membership under Employees’ Pension Scheme 1995 from the existing age of 58 years to 60 years.

The issue of membership under EPS 1995 up to 60 years of age, that is age of superannuation was agitated before Hon’ble High Court of Rajasthan in writ petition no.- 7440/2013. (Annexure E). The relevant excerpts of the judgment are as under:-

“16. The reference to 58 years in the Explanation in para 2(1)(ix) and para 12 of the scheme, which makes a member entitled to superannuation pension or early pension, as the case may be, does not provide for age of superannuation, on which an employee retires from any organization, to which the provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, are applicable. It only refers to the age on which an employee in such organization ordinarily retires.

19. The explanation in para 2(1)(ix) of the EPS, 1995 only provides that an employee shall cease to be the member of pension fund from the date of attaining 58 years of age, or from the date of vesting admissible benefits under the Scheme, whichever is earlier. It does not have any correlation to the actual period of eligible service if it is more than 10 years, if an employee who is a member of the Scheme, retires on attaining the age of superannuation, which is beyond 58 years.

21. If we read the expression “actual service”, “contributory service” with para 12 and 14 of the EPS, 1995, we do not see any reason to deny a person, who has completed 10 years of service on the date of exit from the employment of the establishment, covered under that Act (para 2(1)(ix) of the EPS, 1995), the benefit of monthly member’s pension.

22. As a social welfare scheme applicable to the employees who are contributing to the Employees Provident Fund, and who subscribe to the member of the Employees’ Pension Scheme, we must read down the provisions of para 12 to allow monthly member’s pension to all those members, who have rendered eligible service of 10 years or more on the date of their exit from employment for getting the benefit of superannuation pension. The calculation of pension given in sub-para (2) of para 12 of the EPS, 1995, in that case will not be affected nor would be different for members, who complete 10 years of service on superannuation.

27. For the aforesaid reasons, we are of the view and direct that superannuation pension under para 12(1)(a) of the EPS, 1995, will also be applicable to those employees, who retire after the age of 58 years, provided they have rendered eligible service of 10 years before exit from service at age of superannuation and those, who have contributed to the Employees’ Provident Fund Scheme up to the age of superannuation.”
The Hon'ble Supreme Court has dismissed the SLP filed by the department against the judgment of Hon'ble High Court. As such the orders of the Hon'ble Courts may be examined for compliance in general.

The view of actuary on the increase of retirement age to 60 years was also solicited. The actuary opined that ideally employee will get 2 years more credit of service and should also get 4% bonus for service and contribution beyond age of 58. Since the fund is going to earn return on the corpus which the employee have contributed till age of 58 and also there is a maximum wage ceiling of Rs. 15000, the option may be cost neutral and may be considered. (Annexure F)

It may be considered that at the time of formulation of the EPS, 1995 the age of superannuation was 58 years in general in most of the establishments including the Central and State Governments. Subsequently the age of superannuation has been increased to 60 years in Government and other establishments also. Due to increase in the age of retirement the situation so prevails that the employee still continue in service of the establishment with full salary and also in receipt of pension under EPS, 1995 as the age of cessation of membership is 58 years only.

Therefore, it will be prudent to increase the age of cessation of membership of Employees' Pension Scheme, 1995 to 60 years of age from the existing age of 58 years in compliance of the Courts orders and backed by opinion from the Actuary.

Proposal:-

It is proposed that amendment to para 12(1) (a) and other paras of Employees' Pension Scheme 1995 may be approved as submitted above. Wherever the age of retirement /superannuation is mentioned as 58 years it will be replaced with 60 years.
Minutes of Meeting
37th Meeting of
Pension & EDLI Implementation Committee

Date: 28-Mar-2016

Venue: Mini Committee Room
Ministry of Labour & Employment
Shram Shakti Bhavan
Rafi Marg
New Delhi – 110 001

Present:

1. Dr. V.P. Joy, Central Provident Fund Commissioner - Chairman
2. Shri. G.P. Shrivastava, Employers’ Representative, CBT (EPF) - Member
3. Shri. Vrijesh Upadhyay, Employees’ Representative, CBT (EPF) - Member
4. Shri. Jayesh D. Pandit, Representative of M/s. K.A. Pandit, Appointed Actuary (Domain Expert) - Member
5. Shri. Chandramauli Chakraborty, ACC (Pension) - Convenor

Shri. D.L. Sachdeva, Employee’s Representative, CBT (EPF), Shri. R. S. Maker, Employer’s Representative, CBT (EPF), Smt. Meenakshi Gupta, Joint Secretary & Financial Advisor (MoL&E), Shri. D. S. Negi, Director (SS), MoL&E and representative of PFRDA could not attend the meeting.

Shri. Rajesh Bansal, Additional Central Commissioner (HQ), EPFO also attended the meeting.

Central Provident Fund Commissioner welcomed the members of the Pension and EDLI Implementation Committee (PEIC) and stated that there is only one main agenda before the committee which is a proposal for amendments to the Employees’ Deposit Linked Insurance Scheme, 1976 to allow for retention of membership in the EDLI scheme for members who had exited from employment. He further informed that the proposal is also included in the agenda for the forthcoming meeting of the Central Board of Tristees, EPF (CBT) scheduled for 29-Mar-16. The recommendations of the PEIC would be placed for consideration of the CBT.
2. With these opening remarks he requested the committee to take up the matters in the Agenda for discussion.

Item No. 1: Confirmation of minutes of the 36th meeting of the Pension & EDLI Implementation Committee held on 09-09-2015.

3. **Decision / Recommendation:** The PEIC confirmed the minutes as circulated.

Item No. 2: Action taken Report on the 36th Meeting/Decision

4. **Decision / Recommendation:** The PEIC took note of the Action Taken Report placed before the committee.

Item No. 3: Proposal for amendment to the EDLI Scheme, 1976 for extending voluntary retention of membership for members who cease to be in employment at reduced rate of contribution

5. The CPFC introduced the agenda item to the committee by giving a broad outline of the proposal. He explained that at present the EDLI scheme provides benefits to the family members / beneficiaries of a member in the event of death of the member while in service / employment. However, in the current employment scenario a worker takes up several employments during their working lifetime. On many occasions there is a break or gap between spells of employment on account of layoff or downsizing for which the worker is not responsible. During such periods the worker is in a vulnerable position and in the unfortunate event of his death during such a period the family is worst affected and in this situation even the EDLI benefits are not available.

6. The present proposal for amendment to the EDLI scheme was meant to address this lacunae and offer a voluntary retention of membership of the EDLI scheme to the workers on the cessation of their employment. Since the financial position of the workers in this period is likely to be weak, the contribution for such retention of membership is also kept at a reduced rate (half of the normal EDLI contributions). This proposal would allow the workers to be covered with a life insurance on a voluntary basis during the periods between their employment spells.
7. Shri. Vrijesh Upadhyay welcomed the proposal but stated that it would be preferable that continuity of the membership is maintained from the PF balance and the earnings on it as now full settlement of the PF balance is not being allowed prior to the age of 58 with the introduction of Para 68-NNNN in the EPF scheme. It was explained that in the voluntary retention of membership in EDLI that is being proposed the EDLI contribution is to be deducted from the PF balance of the member and only if there is insufficient balance there is a provision for payment by cheque / draft by the member.

8. Shri. G.P. Shrivastava said that since the continued membership is being given at reduced contribution rate the membership should be offered for a fixed period during which the worker is expected to obtain another employment. The suggestion was welcomed by the committee and it was decided after deliberation that a period of 3 years would be a reasonable period for which the voluntary retention of membership could be allowed after cessation of employment.

9. Decision - Recommendation: The Committee recommended the acceptance of the proposal with the condition that the voluntary retention of membership of EDLI should be allowed for a period of 3 years from the date of cessation of employment as any member can be reasonably expected to find employment within such period.

The meeting ended with a vote of thanks to the chair.
ITEM NO.1  COURT NO.5  SECTION XV
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 33032-33033/2015
(Arising out of impugned final judgment and order dated 22/07/2015 in
LPA No. 411/2012 and LPA No. 412/2012 passed by the High Court Of
Himachal Pradesh at Shimla)

R.C. GUPTA & ORS. ETC. ETC.  

VERSUS

REGIONAL PROVIDENT FUND COMMISSIONER EMPLOYEES
PROVIDENT FUND ORGANISATION & ORS ETC.  

(with interim relief and office report)

Date : 04/10/2016 These petitions were called on for hearing today.

CORAM :
HON’BLE MR. JUSTICE PANJAN GOGOI
HON’BLE MR. JUSTICE PRAFULLA C. PANT

or Petitioner(s)  Mr. Anip Sachthey, Adv.
Mr. Adhitya Dhawan, Adv.
Ms. Anjali Chauhan, Adv.
Mr. Vinayak Shukla, Adv.

For Respondent(s)  Mr. Pankaj Garg, Adv.
Mr. Milind Garg, Adv.
Mr. Ajay Shankar Mani, Adv.
Mr. Suvidutt M.S., Adv.
Mr. Vivek Gupta, Adv.

UPON hearing the counsel the Court made the following
ORDER

Leave granted.
The appeals are allowed in terms of the signed
order.

(Neetu Khajuria)  
Court Master

(Signed order is placed on the file.)

(Asha Soni)  
Court Master
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 10013-10014 OF 2016
(Arising out of SLP(C) Nos. 33032-33033 of 2015)

R.C. GUPTA & ORS. ETC. ETC. ... APPELLANT(S)

VERSUS

REGIONAL PROVIDENT FUND
COMMISSIONER EMPLOYEES PROVIDENT
FUND ORGANISATION & ORS ETC. ... RESPONDENT(S)

ORDER

1. Leave granted.
2. The challenge in these appeals is to an order passed by the Division Bench of the Himachal Pradesh High Court reversing the order of the learned Single Judge by which the learned Single Judge had directed that the appellant-employees would be entitled to the benefit of deposit of 8.33\% of their actual salary in the Pension Fund irrespective of the ceiling limit. The aforesaid percentage i.e. 8.33\% is out of the total of 12\%, which constitutes the employer's share under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the 1952 Act").
3. The facts lie within a short compass. Under the 1952 Act, 10% or 12% of the basic wages including dearness allowance etc. is required to be deposited in the Provident Fund Account of an employee being the employer's share. The Act as enacted in the year 1952 did not contain any provision for pension. Sub-section 6A with which we are concerned, was inserted by an amendment w.e.f. 16.11.1995 providing for the Employees' Pension Scheme to be framed for payment of pension to retiring employees. The corpus of the pension fund was to be inter alia constituted by deposit of 8.33% of the employer's contribution under Section 6 of the Act. The Pension Scheme which was framed to give effect to the provisions of Section 6A contains inter alia Clause 11, which deals with determination of pensionable salary. Under Clause 11(3) of the Pension Scheme, the maximum pensionable salary was limited to Rs.5,000/-, which was subsequently enhanced to Rs.6,500/- per month w.e.f. 08.10.2001. A couple of months after the Pension Scheme was framed w.e.f. 16.11.1995, a proviso was added to Clause 11(3) w.e.f. 16.03.1996
permitting an option to the employer and an employee for contribution on salary exceeding Rs.5,000/- or Rs.6,500/- (w.e.f. 08.10.2001) per month. 8.33% of such contribution on full salary was required to be remitted to the Pension Fund.

4. The appellant-employees on the eve of their retirement i.e. sometime in the year 2005 took the plea that the proviso brought in by the amendment of 1996 was not within their knowledge and, therefore, they may be given the benefit thereof, particularly, when the employer's contribution under the Act has been on actual salary and not on the basis of ceiling limit of either Rs.5,000/- or 6,500/- per month, as the case may be. This plea was negatived by the Provident Fund Authority on the ground that the proviso visualized a cut-off date for exercise of option, namely, the date of commencement of Scheme or from the date the salary exceeded the ceiling amount of Rs.5,000/- or 6,500/- per month, as may be. As the request of the appellant-employees was subsequent to either of the said dates, the same cannot be acceded to.
5. Aggrieved the appellant-employees moved the High Court under Article 226 of the Constitution. The learned Single Judge decided the Writ petition in favour of the appellant-employees making it clear that the decision would not serve as a precedent for the future. The Division Bench reversed the said decision upholding the view of the Provident Fund Authority that under the proviso to Clause 11(3) of the Pension Scheme there was a cut-off date.

6. We have heard the learned counsels for the parties. We have read and considered the orders of the High Court, the provisions of the Act, the Provident Fund Scheme as well as the relevant provisions of the Pension Scheme.

7. Clause 11 (3) of the Pension Scheme is in the following terms :


\[xxx \text{ } xxx \text{ } xxx\]

(3) The maximum pensionable salary shall be limited to \[1\text{rupees six thousand and five hundred/Rs.6,500/-}\] per month.

\[2\text{Provided that if at the option of the}\]

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1 Subs. by G.S.R.774(E), dated 8th October, 2001 (w.e.f. 1-6-2001)
2 Subs. by G.S.R. 134, dated 26th February, 1996 (w.e.f. 16-3-1996)
employer and employee, contribution paid on salary exceeding [rupees six thousand and five hundred/Rs.6,500/-] per month from the date of commencement of this Scheme or from the date salary exceeds [rupees six thousand and five hundred/Rs.6,500/-] whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.]

8. Reading the proviso, we find that the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates are not cut-off dates to determine the eligibility of the employer-employee to indicate their option under the proviso to Clause 11(3) of the Pension Scheme. A somewhat similar view that has been taken by this Court in a matter coming from the Kerala High Court, wherein the Special Leave Petition (C) No.7074 of 2014 filed by the Regional Provident Fund Commissioner was rejected by this Court by order dated 31.03.2016. A beneficial Scheme, in our considered view, ought not to be allowed to be defeated by reference to a cut-off date, particularly, in a
situation where (as in the present case) the employer had deposited 12% of the actual salary and not 12% of the ceiling limit of Rs.5,000/- or Rs.6,500/- per month, as the case may be.

9. A further argument has been made on behalf of the Provident Fund Commissioner that the appellant-employees had already exercised their option under paragraph 26(6) of the Employees' Provident Funds Scheme. Paragraph 26(6) is in the following terms:

26. Classes of employees entitled and required to join the fund

xxx  xxx  xxx

(6) Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than [six thousand five hundred rupees] of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative

3 Subs. By Notification No.S-350/2/2/96-SS II, dated 4th May, 2001, for "rupees five thousand". Earlier the words "rupees five thousand were substituted by G.S.R. 718(E), dated 23rd September, 1994, for the words "rupees three thousand and five hundred" (w.e.f. 1-10-1994).
charges payable and shall comply with all statutory provisions in respect of such employee.

10. We do not see how exercise of option under paragraph 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under paragraph 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under paragraph 26 of the Provident Scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

11. The above apart in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the L.P.A. before the
Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefitted some of the employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees.

12. Consequently and in light of the above, we allow these appeals and set aside the order of the Division Bench of the High Court.

..........................J.
(RANJAN GOGOI)

..........................J.
(PRAFULLA C. PANT)

NEW DELHI
OCTOBER 04, 2016
Minutes of meeting of senior Officers of Head Office held on 23/11/2016 on
Supreme Court orders related to Employees Pension Scheme 1995

A meeting of senior officers of Head office, FA & CAO and Legal Adviser under
the chairmanship of CPFC was held on 23/11/2016 to discuss the implementation of
orders of Hon’ble Supreme Court in various SLPs for consideration of pensionable
salary exceeding statutory wage ceiling and exercise of option, etc.

The following Officers were present in the meeting:-

1) Shri Manish Gupta, IAS (FA & CAO)
2) Sh. R. M. Sharma (Legal Adviser), EPFO
3) Shri M. Narayanappa, Addl. CPFC-I
4) Shri S. K. Thakur, Addl. CPFC-I
5) Shri. Chandramouli Chakrabarty, Addl. CPFC-II

The Central P. F. Commissioner welcomed all the officers and asked Addl. CPFC
(Pension) to explain the background and issues for discussion scheduled for present
meeting.

Shri S. K. Thakur Addl. CPFC (Pension) Informed that there are two issues which need
to be deliberated in depth.

1) Implementation of Supreme Court Order

The matter of determination of Pensionable salary exceeding the statutory
wage ceiling and exercise of option under deleted proviso to Para 11(3) of Employees’
Pension Scheme 1995 was agitated before many High Courts. Hon’ble High Court of
Kerala, in particular, had disposed the various petitions on similar line directing the
EPFO that the 8.33% of the employer’s contribution proportionate to the salary of
employees in excess of Rs.6500/- shall now be credited to the pension scheme and
orders passed in accordance with law. Needless to say the interest accrued in the
provident fund account to that extent also will stand transferred to the pension
account. The employees shall also submit joint application along with their employer
wherever the same has not been done. The department had filed more than 10 SLPs
before the Hon’ble Supreme Court against the orders passed by Hon’ble High Courts.
The same have been dismissed by Hon’ble Supreme Court stating that “We do not find
any legal and valid ground for interference, the special leave petitions are dismissed.”
It is pertinent to mention that the Hon’ble Supreme Court of India did not deliberate
upon the question of law and rules provisions of Act in schemes in most of the SLPs.
However, in SLP no.33032-33033 of 2015 in the matter of R.C. Gupta & ors Vs RPFC, Shimla and ors, the Hon’ble Supreme Court of India has examined the provisions of EPF Scheme 1952 & Pension Scheme and passed the detailed order. The relevant excerpts of the order was informed which are as under:-

"10. We do not see how exercise of option under Paragraph 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under Paragraph 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under Paragraph 26 of the Provident Fund Scheme is inevitable. Exercise of option under Paragraph 26(6) is a necessary precursor to exercise of option under clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of further option under clause 11(3) of the pension scheme unless the circumstances warranting such foreclosure are clearly indicated.

11. The above apart, in a situation where the deposit of the employer’s share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the LPA before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefitted some of the employees. At best what the Provident commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employee."

A background note with the draft circular in this regard for compliance of the Hon’ble Supreme Court order was placed before the officers for consideration and opinion in the matter. After going through the Supreme Court orders, background note and draft circular for compliance of the orders of the Supreme Court in the respective SLPs filed by the organisation, it was unanimously agreed to recommend to comply with the orders of the Courts, in particular, order of the Hon’ble Supreme Court in SLP no.33032-33033 in the matter of R. C. Gupta & others.

However, considering the wider implication and needing uniform compliance for all such type of cases including the petitioners and also having financial bearing on the Pension Fund, it was decided that the matter may be placed before Pension Implementation Committee, a committee formed by the CBT in respect of policy matters related to Pension and EDLI.
2. Contribution exceeding wage ceiling of Rs.15000/- per month by the existing members of EPS 1995 with additional contribution of 1.16% of the wage from their provident fund account w.e.f. 01.09.2014.

Vide notification no. GSR 609 dated 22.08.2014 w.e.f. 01.09.2014 clause 4 of para 11 of the EPS 1995 was inserted with following provisions:-
- The existing members as on the 1st day of September, 2014, who at the option of the employer and employees, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employees continue to contribute on salary exceeding fifteen thousand rupees per month:
  Provided that the aforesaid members have to contribute at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder: Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014:
  Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:
  Provided also that if no option is exercised by the member within such period (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Fund Scheme from time to time.

As per the above provisions the time limit to exercise option of contribution exceeding Rs.15000/- wage ceiling to Employees Pension Fund has already expired on 31.08.2014. However, it has been found through the system that many of the members of the pension scheme who are continuing to contribute on higher wage ceiling exceeding Rs.15000/- per month to the pension fund @8.33% of the total wage are not contributing the additional contribution @1.16% of the wage on the salary exceeding Rs.15000/-. As such they are contributing at lower rate than required under the revised scheme to get benefits of the pension scheme as compared to the
members who are contributing on wage ceiling up to the 15000/- per month as in their case 1.16% contribution is being paid by the Central Government.

The matter has been examined based on the fact that if such members are not informed and proper action not taken well in advance while they are members of the pension scheme, they may claim for pension as per the provision of the scheme although without contributing at the rate as per provisions of the scheme.

To obviate such disputes in future, the following proposals were discussed.

Those members of the pension scheme who are contributing to pension fund exceeding the wage ceiling of Rs.15000/- per month irrespective of the fact whether they have submitted joint option as per the proviso of para 11 (4) of the pension scheme or paying additional contribution at the rate of 1.16% of the wage as per the same proviso or not, should be deemed to have consented and given option for contribution exceeding the wage ceiling of Rs.15000/- per month @ 8.33%. Additional contribution of 1.16% of the wage exceeding Rs.15000/- have to be paid by such members from their provident fund as per the proviso of para 11 (4) of the EPS, 1995. In all such cases where contribution @ 8.33% of the wage exceeding the ceiling of Rs.15000/- per month has been made, additional contribution of 1.16% along with interest as applicable to the provident fund from time to time shall be diverted from provident fund account of such members to the pension fund. Calling of option from the members contributing on higher wage exceeding the ceiling of Rs.15000/- per month and/ or additional contribution at the rate of 1.16% on the wage exceeding Rs.15000/- shall be dispensed with.

An opportunity may be given with a time limit of six months to those members of the pension scheme who do not want to contribute on higher wage exceeding Rs.15000/- @ 8.33% with additional contribution at the rate of 1.16% of the wage exceeding Rs.15000/-, to opt out of higher contribution. In such cases, the contribution paid beyond the wage ceiling of Rs.15000/- shall be diverted from the pension fund to their provident fund account along with interest as applicable to provident fund from time to time. This will be a case of ‘negative option’ for non-contribution exceeding the wage ceiling of Rs.15000/- w.e.f. 01.09.2014.
The officers present in the meeting agreed unanimously for the above proposal and suggested for placing the matter before Pension Implementation Committee for consideration and for sending the proposal to the Ministry of Labour & Employment for necessary amendment in the Employees’ Pension Scheme 1995 under Para 11 of EPS 1995.

The meeting ended with vote of thanks to the chair.

Dr. V. P. Joy, IAS
(Central P. F. Commissioner)
NOTIFICATION

New Delhi, the 22nd August, 2014

G.S.R. 609(E).—In exercise of powers conferred by section 6A read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby make the following Scheme further to amend the Employees' Pension Scheme, 1995, namely—

1. (1) This Scheme may be called the Employees' Pension (Amendment) Scheme, 2014.

(2) It shall come into force on and from the 1st day of September, 2014.

In the Employees' Pension Scheme, 1995, (hereinafter referred to as the principal Scheme), in paragraph 3, in sub-paragraph 3, in the proviso, for the words 'rupaees six thousand and five hundred', wherever they occur, the words 'twenty thousand rupees' shall be substituted.

In the principal Scheme, in paragraph 6, in clause (d), after the words, figures and letter (or 27) of the Employees' Provident Funds Scheme, 1952" the words 'and whose pay on such date is less than or equal to fifteen thousand rupees', shall be inserted.

In the principal Scheme, in paragraph 11—

(a) for sub-paragraph (1) and the proviso thereto, the following shall be substituted, namely—

"(1) The pensionable salary shall be the average monthly pay drawn in any manner including on post-retirement basis during contributory period of service in the span of sixty months preceding the date of exit from the membership of the Pension Fund and the pensionable salary shall be determined on prorata basis for the pensionable service up to the 1st day of September, 2014, subject to a maximum of six thousand and five hundred rupees per month, and for the period thereafter at the maximum of fifteen thousand rupees per month.

Provided that, if a member was not in receipt of full pay during the period of sixty months preceding the date he ceased to be the member of the Pension Fund, the average of previous sixty months full pay, drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account in determining pension."
Petition(s) for Special Leave to Appeal (C) No(s). 8959/2015

(Arising out of impugned final judgment and order dated 29/10/2014 in DBCRP No. 7440/2013 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur)

THE CHAIRMAN, CENTRAL EMPLOYEES PROVIDENT FUND ORGANIZATION AND ARR.  

VERSUS 

GAYATHRIGRA SINGH  

(with appln. (s) for c/delay in filing SLP and c/delay in refiling SLP)

Date: 01/07/2015 This petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Ranjeet Kumar, Adv.  
Mrs. B. Sunita Rao, Adv.

For Respondent(s) 

UPON hearing the counsel the Court made the following ORDER

Delay condoned.

We are not inclined to entertain this special leave petition, which is dismissed.

(SHARDA KAPOOR)  
COURT MASTER
IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

D.B.CIVIL WRIT PETITION NO. 74-I0-2013

GYANENDRA SINGH

vs

THE CHAIRMAN, CENTRAL EMPLOYEES PROVIDENT
FUND ORGANIZATION & ANR

DATE: OCTOBER 29, 2014

HON'BLE THE ACTING CHIEF JUSTICE MR. SUNIL AMBAYANI
HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Shri Gyanendra Singh, petitioner, present in person.
Mr. P.N. Mathur, OIC, for the respondents.

BY THE COURT.(PER HON'BLE THE ACTING CHIEF JUSTICE)

1. We have heard Shri Gyanendra Singh, petitioner, appearing
in person. Shri P.N. Mathur, OIC, appears for the Central Employees
Provident Fund Organization.

2. By this writ petition, the petitioner has prayed for a
direction to the respondents to declare the petitioner eligible for grant
of monthly pension under the Employees' Pension Scheme, 1995 (in short,
the EPS, 1995). He has also prayed for a direction to declare Rule 1241
(lan of the EPS, 1995, which refers to the retirement age to be 58 years, as
illegal and arbitrary.

3. The petitioner retired from military service in the year 1987
and has made his final claim for service retirement pension through
resulting from service on 22.08.1991. The report of
age of the Officers in the bank is 60 years. The petitioner retired on
superannuation on 31.01.2002, after completing the age of 60 years. On
that date, he had completed 11 years of service in Jaipur Thar Aanchalik
Gramin Bank. On his retirement, the petitioner applied to the
Commissioner, Central Employees Provident Fund Organization, which
also regulates the pension payable under the EPS, 1995, and entitlement
to the member's monthly pension under the Scheme. He received a letter
dated 17.08.2005 from the Assistant Provident Fund Commissioner
(Pension) that for entitlement to pension under the EPS, 1995, the
petitioner was required to serve for 10 years as eligible service with the
age of retirement as 58 years. Since the petitioner had not completed 10
years of qualifying service on the date when he attained the age of 58
years, he was not entitled to pension under the EPS, 1995. The
petitioner submitted representations beginning from 06.02.2002 to
30.11.2008, and the last one on 20.04.2009, and thereafter filed this writ
Petition for declaring the condition of retirement at the age of 58 years,
as against the actual retirement age, under Rule 12(1)(a) of the
EPS, 1995, as illegal, arbitrary and unreasonable.

4. The petitioner, appearing in person, submits that in order to
be eligible for grant of pension under the EPS, 1995, for a person who is
the member of Employees Provident Fund under the Employees
Provident Funds And Miscellaneous Provisions Act, 1952 (in short, the
Act), the condition of completion of 10 years of service or more, is
sufficient. The second condition of attaining the age of 58 years should
not be necessary, if an employee has completed 58 years before attaining the age of superannuation, or may have retired on attaining the age of superannuation after 58 years, if the organization in which he is serving, has provided the age of superannuation beyond 58 years.

5. It is submitted by the petitioner that the EPS, 1995, substituted by G.S.R. 431(E), dated 15.06.2007, does not restrict the age of superannuation as 58 years, to be eligible for monthly member's pension under the EPS, 1995. The provision only enables those persons and make them eligible, who have rendered 10 years service or more, and retires on attaining the age of 58 years. The Rule does not prohibit the eligibility to those persons, who have superannuated on the increased age beyond 58 years i.e. 60 years or more. The condition of rendering eligible service of 10 years or more is applicable to the age of superannuation and is not restricted to the retirement of only those employees, in whose organization the age of superannuation is 58 years.

6. In the reply filed by Shri Pradeep K. Sharma, Assistant Provident Fund Commissioner in the Office of Employees Provident Fund Organization, Regional Office, Jaipur, the joining of the petitioner in the bank on 28.01.1991 and his retirement on 31.01.2002, is admitted. It is however stated in paragraph 6, relying upon para 12(1)(a) of the EPS, 1995, that an employee must have rendered eligible service of 10 years and attained the age of 58 years, to be entitled to get monthly pension. Since the petitioner neither rendered eligible service of 10 years till the age of 58 years, and that his length of service was about 9 years till
age of 58 years, therefore, he is not entitled to get monthly pension.

Relying upon para 14 of the EPS, 1995, it is stated that if a member has not rendered the eligible service prescribed in Paragraph 9 on the date of exit, or on attaining 58 years of age, whichever is earlier, he/she would be entitled to a withdrawal benefit, as laid down in Table D, or may opt to receive the Scheme Certificate provided on date he/she has not attained 58 years of age. The Proviso to sub-para (1) of para 14 provides that an existing member shall receive additional return of contributions for his/her past service under the Employees Family Pension Scheme, 1971, computed as withdrawal-cum-retirement benefits, as per Table A multiplied by factor given in Table B.

7. Paragraph 12 and 14 of the Employees Pension Scheme, 1995, as substituted by G.S.R. 431(E), dated 15.06.2007, which was deemed to have come into force from the date from which the Employees Pension Scheme, 1995 came into force i.e. from 16.11.1995, are quoted as below:

"12. Monthly Member's Pension.-(1) A member shall be entitled to:-

(a) superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years;

(b) early pension, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years.

(2) In the case of a new entrant, the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors, namely:
Monthly members' pension = Pensionable salary \times \text{Pensionable service} / 70

(3) In the case of an existing member, in respect of whom the date of commencement of pension is after the 16th November, 2005,

(i) superannuation or early pension shall be equal to the aggregate of:

(a) pension as determined under sub-paragraph (1) for the period of pensionable service rendered from the 16th November, 1995 or Rs. 635/- per month whichever is more;

(b) past service pension shall be as given below:

The past service pension payable on completion of 58 years of age on the 16th November, 1995.

Para 14: Benefits on leaving service before being eligible for monthly members' pension:

(1) If a member has not rendered the eligible service prescribed in Paragraph 9 on the date of exit, or on attaining 58 years of age whichever is earlier, he/she shall be entitled to a withdrawal benefit as laid down in Table D or may opt to receive the Scheme Certificate provided on date he/she has not attained 58 years of age.

Provided that an existing member shall receive additional return of contributions for his/her past service under the Employees' Family Pension Scheme, 1971 computed as withdrawal cum-retirement benefits as per Table A multiplied by factor given in Table B.

8. It is submitted by Shri P.N. Mathur, DIC for the Employee Provident Fund Organization that since on the date, the petitioner attained the age of 58 years, he had not completed 10 years of service, he was not eligible for monthly member's pension under the EPS, 1995.

9. We have heard the respective submissions and considered the provisions of Paragraphs 12 and 14 of the EPS, 1995.
10. The EPS, 1995 was made in exercise of the powers under Section 6A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 with effect from 16.11.1995, giving the employees an option to become the members of the Scheme with effect from 01.04.1993. Para 1(3) of the EPS, 1995 provides that subject to the provisions of Section 16 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the Scheme shall apply to the employees of all factories and other establishments to which the Employees Provident Funds And Miscellaneous Provisions Act, 1952 applies or is applied under sub-section (3) or sub-section (4) of Section 1 or Section 3 thereof.

11. The expression "actual service", "contributory service", "eligible member", "Pension", and "Member", is defined in Para 2(1)(iii)(iv)(v)(viii) and (ix) of the EPS, 1995, as follows:

"2. Definitions:- (1) in this Scheme unless the context otherwise requires:

(i) "actual service" means the aggregate of period of service rendered from the 16th November, 1995 or from the date of joining any establishment whichever is later to the date of exit from the employment of the establishment covered under the Act;

(iii) "contributory service" means the period of actual service rendered by a member for which the contributions to the fund have been ( receive or are receivable);

(vi) "eligible member" means an employee who is eligible to join the "Employees Provident Scheme".
(viii) "Pension" means the pension payable under the Employees' Pension Scheme and also includes the family pension admissible and payable under the Employees' Family Pension Scheme, 1971 immediately preceding the commencement of the Employees' Pension Scheme, 1995 with effect from the 16th November, 1995:

(ix) "Member" means an employee who becomes a member of the Employees' Pension Fund in accordance with the provisions of this Scheme.

12. The word "actual service", as defined under the EPS, 1995, means the aggregate of period of service rendered from the 16th November, 1995 or from the date of joining any establishment whichever is later to the date of exit from the employment of the establishment covered under the Act.

13. The word "contributory service" means the period of actual service rendered by a member for which the contributions to the fund have been received or are receivable.

14. "Member", as defined in para 2(iii)(ix) of the EPS, 1995, means an employee who becomes a member of the Employees' Pension Fund in accordance with the provisions of the Scheme. The Explanation to the expression "Member", inserted by G.S.R. 66, dated 22nd February, 1999, with effect from 6th March, 1999, provides that an employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of attaining admissible benefits under the Scheme, whichever is earlier.
15. Para 12 of the EPS, 1995, provides for entitlement to superannuation pension, if a member has rendered the eligible service of 10 years or more and retires on attaining the age of 58 years. It also provides for an early pension, if a member has rendered eligible service of 10 years or more and retires otherwise ceases to be in the employment before attaining the age of 58 years. Sub-para(2) of Para 12 provides for method of computation of monthly pension, and sub-para(3) provides for method of computation where the date of commencement of pension is after 16.11.2005.

16. The reference to 58 years in the Explanation in para 2(1)(ix) and para 12 of the Scheme, which makes a member entitled to superannuation pension or early pension, as the case may be, does not provide for age of superannuation, on which an employee retires from any organization, to which the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, are applicable. It only refers to the age on which an employee in such organization ordinarily retires.

17. In the present case, it is not denied that the petitioner was the employee of the bank, which is an organization covered by the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and that the retirement age of the Officers of the bank who were contributing to the Employees Provident Fund, was 60 years. It is also not denied that the petitioner continued to contribute to the Employees Provident Fund even beyond the age of 58 years and upto
age of 60 years, when he retired on attaining the age of superannuation.

18. Considering the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1955 which is a social welfare measure and is beneficial to a large number of employees, who are covered by the Employees Provident Funds and Miscellaneous Provisions Act, 1952, and to whom the pension scheme is applicable, the provisions of the EPS, 1955, have to be interpreted liberally for the purpose, for which the provisions were enacted.

19. The Explanation in para 2(1)(ix) of the EPS, 1955 only provides that an employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age, or from the date of vesting admissible benefits under the Scheme, whichever is earlier. It does not have any correlation, if the actual period of eligible service if it is more than 10 years, if an employee who is a member of the Scheme, retires on attaining the age of superannuation, which is beyond 58 years.

20. In the present case, the petitioner was contributing to the Employees Provident Fund, and was a member of the Employees Pension Scheme, 1955. He did not complete 10 years of eligible service before attaining the age of 58 years, which is referable to be age of superannuation. He however had completed more than 10 years of service before attaining the age of 60 years, when he actually superannuated.
21. If we read the expression "actual service", "contributory service" with para 12 and 14 of the EPS, 1995, we do not see any reason to deny a person, who has completed 10 years of service on the date of exit from the employment of the establishment, covered under that Act (para 2(1)(iii) of the EPS, 1995), the benefit of monthly member's pension.

22. As a social welfare scheme applicable to the employees who are contributing to the Employees Provident Fund, and who subscribe to the member of the Employees Pension Scheme, we must read down the provisions of para 12 to allow monthly member's pension to all those members, who have rendered eligible service of 10 years or more on the date of their exit from employment for getting the benefit of superannuation pension. The calculation of pension given in sub-para (2) of para 12 of the EPS, 1995, in that case will not be affected nor would be different for members, who complete 10 years of service on superannuation.

23. It is submitted by the petitioner, appearing in person, that the substantial benefit of monthly pension to a member, who has rendered eligible service of 10 years, will be lost if the retirement age is treated to be 58 years for all those serving in the organizations where the retirement age is more than 58 years, leaving him with no cover of pension in their old age. The entire provisions of the EPS, 1995 are aimed to provide the old age pension/superannuation pension to an employee serving in an organization, to which the Employees Provident Funds and
Misellaneous Provisions Act, 1952 is applicable. There is no object to be achieved, if an employee who has rendered 10 years of service or more on the date of exit from the employment, by restricting superannuation pension to only those employees, who have rendered eligible service of 10 years before they attained the age of 58 years. We also find substance in the contentions of the petitioner that since the age of superannuation was 58 years in most of the organizations covered by the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the superannuation pension was made eligible to only those who had rendered eligible service of 10 years on the age of retirement at 58 years. The amendment in the Scheme however have failed to take into consideration those organizations, which are covered by the Act, in which the age of superannuation has been increased to 60 years.

24. The petitioner continued to subscribe to the Employees Provident Fund Scheme and the EPS, 1995, and made his contributions regularly even after attaining the age of 58 years. He had rendered 10 years of eligible service, as "actual service", which is also a "contributory service" under the EPS, 1995. There is, thus, no reason as to why he should not be allowed the benefit of superannuation pension under para 12 of the EPS, 1995.

25. Article 38(1) and Article 39(d) of the Constitution of India in Part IV, direct the State to secure a social order for the promotion of welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform
All the institutions of the national life. Article 38(2) strives to minimize the inequalities in income, status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The principle of one rank one pension has been accepted by Supreme Court of India in P. Ramakrishna Raju Vs. Union of India [Writ Petition (Civil) No. 521 of 2002] decided on 31.03.2014. It is a principle based on equal protection of laws guaranteed under Article 14 of the Constitution of India. There is no reason as to why the principle be not applied to the facts of this case.

26. In the present case, the petitioner will be discriminated as against those employees, who have completed 10 years of service in an organization where retirement age is 58 years and those who have rendered eligible service of 10 years upto the age of exit from service i.e. the age of superannuation at 60 years. The petitioner who was the employee of the organization with age of superannuation at 60 years, having served for more than 10 years before exit from employment, has been deprived of the superannuation pension. We do not find any ground to allow such discrimination between the two sets of employees.

27. For the aforesaid reasons, we are of the view and direct that superannuation pension under para 12(1)(a) of the EPS, 1995, will also be applicable to those employees who retire after the age of 58 years, provided they have rendered eligible service of 10 years before exit from service at the age of superannuation and those, who have contributed to the Employees Provident Fund Scheme upto the age of superannuation.
28. The writ petition is allowed with direction to the respondents to allow superannuation pension to the petitioner on a formula given under para 12(2) of the EPS, 1995 with effect from 31.01.2002, on his retirement attaining the age of 60 years, on superannuation from the bank. The superannuation pension will be computed and paid to the petitioner regularly with effect from 01.02.2002. The entire arrears will be paid within three months from the date, a certified copy of this order is produced in the Office of the Employees Provident Fund Organization.

There shall be no order as to costs.

(VEERENDR SINGH SRIDHANA), J.       (SUNIL AMBANI), ACTING C. J.
To: "acc.pension@epfindia.gov.in" <acc.pension@epfindia.gov.in>

EPF_MODIFICATION 21-01-2015-rev.pdf (114kB)

Dear Mr. S.K. Thakur,

I am attaching letter sent earlier.

Regards,

Jayesh

Your message is ready to be sent with the following file or link attachments:


Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.
The Addl. Central Provident Fund Commissioner (Pension)  
Employees Provident Funds Organisation  
(Ministry of Labour, Government of India)  
14, Bhikaiji Cama Place  
NEW DELHI-110 066.

Dear Sir,

**Subject: Proposed amendments**

We refer to our discussion as regards the proposal for

1. Restoration of commutation after 15 years of pensioners who have taken commutation in the past
2. Re-introduction of return of corpus benefit
3. Re-introduction of commutation of pension
4. Increasing age of retirement to 60 years

As regards point 1, the liability of restoration of pension may not be much as compared to the corpus available with the trust, so the option if given may not put higher burden on the trust. Exact burden can be calculated based on the data. The cost on account of restoration of commutation is app. Rs.61.5 for rupee 1 at age 73. Depending on the amount of commutation being restored the cost will be to the scheme

As regards Point 2 above, we would suggest not to re-introduce the option in this volatile interest rate scenario.
As regards Point 3, a cost neutral commutation factors can be worked out and the same if applied for commutation there will not be additional burden on the trust. Commutation is a present value of the pension which one is to receive for life, the current mortality table is IALM (2006-08) and earning rate is 8% if the mortality table and earning rate changes than new factors will have to be worked out. The commutation factor has to be different for each age at which the commutation is taken. We can work out the factor on current scenario.

As regards point 4, ideally employee will get 2 years more credit of service and should also get 4% bonus for service and contribution beyond age of 58. Since the fund is going to earn return on the corpus which the employee have contributed till age of 58 and also there is a maximum wage ceiling of Rs.15,000, the option may be cost neutral and may be considered.

We hope this will help you in making decision.

Thanking you,

Yours faithfully,

FOR M/S. K.A. PANDIT

Date: 22nd January 2015
No. Pension/38th PEIC Meeting/2016

To

All Members,
Pension & EDLI Implementation Committee
CBT, EPF

Sub: Draft minutes of the 38th Meeting of the Pension & EDLI Implementation Committee held on 08.12.2016 – reg.

Sir,

A copy of minutes of the 38th Meeting of Pension & EDLI Implementation Committee held on 08.12.2016 as approved by the Chairman, PEIC is forwarded herewith. It is requested to forward your comments, if any, on the minutes, within 10 days from the date of receipt of this letter.

Encl: As above

Yours faithfully

(Mukesh Kumar)
Regional P.F. Commissioner - I (Pension)

Copy to:

1. PS to CPFC & Chairman, of PEIC
2. PS to Additional Secretary & FA, Ministry of Labour & Employment, New Delhi
3. PS to Director (IDAS, EPFO), Ministry of Labour & Employment, New Delhi.
4. PS to ACC-I (Pension)
Minutes of 38th Meeting of Pension & EDLI Implementation Committee

Dated: 08 December, 2016

Venue: Conference Hall, Employees Provident Fund Organisation, Head office, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-66.

Present:

1. Dr. V.P. Joy, Central Provident Fund Commissioner - Chairman
2. Shri Vinod Kumar, Director (MoL&E) - Member
3. Shri G.P. Srivastava, Employers’ Representative, CBT (EPF) - Member
4. Shri Vrijesh Upadhyay, Employees’ Representative, CBT (EPF) - Member
5. Shri D.L. Sachdev, Employees’ Representative, CBT (EPF) - Member
7. Dr. S.K. Thakur, ACC-I (Pension) - Convenor

Shri Arun Goel, Additional Secretary & Financial Advisor (MoL&E), Shri R.S. Maker, Employers’ Representative, CBT (EPF) and the representative of PFRDA could not attend the meeting.

Central P.F. Commissioner welcomed the members of the Pension and EDLI Implementation Committee (PEIC) and introduced the agenda items in brief before the committee for consideration.

With these opening remarks he requested ACC-I (Pension) to take up the matters for discussion as per agenda note. Accordingly, the agenda items were placed for consideration of the committee.

**Item No.1 Confirmation of minutes of the 37th meeting of the Pension & EDLI Implementation Committee**
Decision/Recommendation: The PEIC confirmed the minutes of the 37th meeting as circulated.

**Item No.2 Action Taken Report on the 37th meeting/decision.**
Decision/Recommendation: The PEIC took note of the Action taken report placed before the committee.
**Item No.3** Implementation of Supreme Court Orders related to Employees' Pension Scheme 1995.

The agenda item was deliberated at length and the Committee unanimously decided to comply with the orders of the Hon’ble Supreme Court in SLP No.33032 – 33033 of 2015 in the matter of Shri R.C. Gupta & Others Vs. RPFC (Shimla) & Others, in respect of all similar cases to avoid further litigation in this regard.

However, it was agreed that compliance may be made immediately in respect of the Provident Fund & Pension Members including superannuated cases whose accounts are maintained by EPFO as their details are already available with EPFO and contribution on higher wages has been received by EPFO. Their pension settlement may be regulated in accordance with the order of the Hon’ble Supreme Court by taking joint option from the employee and the employer and transfer/payment to Pension Fund as per details of payable contributions with interest.

In respect of those members of Exempted Provident Fund Trusts whose contribution on higher wages has not been received by EPFO, it was decided that their cases may be examined on verification of books of record of the exempted establishment and the trust regarding compliance to Provident Fund and Pension Fund as per the provisions of the EPF Scheme 1952 and Employees Pension Scheme 1995 and the information may be submitted to the committee.

**Item No.4** Contribution exceeding wage ceiling of Rs.15000/- per month by the existing members of EPS 1995 with additional contribution of 1.16% of the wage from their provident fund account w.e.f. 01.09.2014.

The proposal was welcomed and approved by the committee for making necessary amendment in the scheme. The members of the committee also suggested that this provision should be made known to all such concerned members of the pension scheme through wide publicity and written communication.

**Item No.5** Increase in Cessation of membership under Employees’ Pension Scheme 1995 from the existing age of 58 years to 60 years.

The agenda item was approved as contained in the agenda note for amendment in the EPS, 1995.
Shri G.L. Sachdev, Member, suggested that the age of superannuation should be changed in the model standing rules also. The Chairman observed that this aspect is not in the domain of the EPFO and so the member may take up the issue before the appropriate forum.

The meeting ended with a vote of thanks to the chair.

(Dr. V.P. Joy)
Central P.F. Commissioner
and Chairman, PEIC, CBT, EPF.