



NATIONAL CONFEDERATION OF OFFICERS' ASSOCIATIONS (NCOA)
(National forum of the executives of Central Public Sector Enterprises)
Registered under the Trade Union Act 1926 Reg.No.DNE 707

President :
V.K.TOMAR (MTNL)

Secretary General :
BABY THOMAS (HOCL)

Working President :
LAKSHMI NARAYANA (BEL)

Treasurer
H.M.MALLESH (BEML)

Vice Presidents :

North :
Arvind Pal Dahiya (BSNL)

East :
Athul Mohanta (HPC)

West :
Sanjay Wasnik (RCF)

South :
Ramalingeshwara Rao (Midhani)

Dy.Secretary General :

North :
Sheilendra Kuntal (HMT)

East :
B.C.Ray (NALCO)

West :
A.Shelhalkar (MDL)

South :
Jothi Muhammad(NLC)

Organising Secretary :
G.Anil Kumar (ITI)

Secretary (Women Affairs)
Geeta Sunatkari (MDL)

-1-

06.06.2016

To

The Central PF Commissioner,
Employees Provident Fund Organisation,
Bhikaji Cama Place, New Delhi

Dear Sir,

Sub: Misinterpretation of Court Order, thereby imposing restrictions on members of EPS '95 for changing their option for higher pension

Ref: 1. Pension-I/12/33/EPS Amendment/96 Vol.II/4432 dt 31.05.2017
2. Pension-I/12/33/EPS Amendment/96 Vol.II/34007 dt 23.03.2017
3. Order by the Hon'ble Supreme Court of India in SLP 33032-33033/2014

It is quite unfortunate to note that the Order by the Hon'ble Supreme Court, referred 3rd above, is misinterpreted by the EPFO rejecting the same in its letter and spirit, and accordingly released the orders under ref.1 & 2 above arbitrarily, further putting the EPS 95 members into more hardship.

As can be seen in the referred Order that the Hon'ble Court has categorically directed that a beneficial scheme shall not be allowed to be defeated by any reference particularly in a situation where the employer had deposited 12% of the actual salary and not 12% of the ceiling amount.

It can also be seen in the above Order that the Hon'ble Court has permitted all the EPS 95 members who wish to change their option, without classifying them as "*members in the unexempted PF Trust*" or "*members in the exempted PF Trust*". Not only that, at least one of the petitioners in the cases referred by the Supreme Court is from an exempted Trust, i.e., Mr M.Babu from FACT Ltd, Kochi. The exempted organisation's trusts are also governed by the rules of the EPFO, and hence it does not make any difference.

Also, the ceiling of the salary happened to be referred in the observations by the Court, as Rs.5,000 & Rs.6,500 during the examination of the case, was just because that the ceiling at the time of filing the cases was not enhanced to Rs.15,000/-, and hence it does not mean that the Apex Court has not considered the matter of EPS members whose salary limit that was enhanced to Rs.15,000/- subsequently.

Contd...P2

K. Ashok Rao, Chief Patron. KSN. Raju and G.L.Jogi, Advisors

Address for correspondence

Baby Thomas, Secretary General, C/o HOCL, Ambalamugal, Ernakulam-682302. E-mail: sg@ncoaindia.com, Mob: 94460 81060

Website: www.ncoaindia.com

-2-

The very intent, purpose, objective and aim of the Apex Court is crystal clear in its observations on the issue involved in the case, and in the final speaking order of the Hon'ble Court, is for not blocking any member in the EPS 95 for changing their option for higher pension.

It is highly objectionable that, disregarding all the above, the Supreme Court Order has been misinterpreted and accordingly released the orders referred to 1 & 2 above, keeping away a good number of members in the EPS '95 who wish to change their option from the minimum salary to actual salary, arbitrarily categorizing them as exempted trust members & whose salary ceiling for pension is above Rs.6500/-. This may rather be a case of contempt of Court, as we fear, which is to be avoided immediately.

....2

We feel that Central Board of Trust has not been briefed properly on these facts, especially with respect to the matter of exempted trusts. Organisations with large number of employees having PF coverage are given Trusts with exempted status is for the administrative convenience of the EPFO field/regional offices for extending hassle-free services to the subscribers, and are governed by the Act & Rules applicable.

The Apex Court has observed that *"all that the PF Commissioner is required to do is an adjustment of accounts which in turn would have benefited some of the employees. At best what the PF Commissioner could do and which we permit him to do under the present order is to seek return of all such amounts that the concerned employees may have taken or withdrawn from their PF accounts 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."* This instruction by the Court is very clear that there is no need of a further speaking order from any authority to say that (1) the order is applicable for all the members in the EPS '95 Scheme, right from the period starting 1995, whose employer has been contributing to the PF above the statutory limit @ 8.33%, and who wish to change their option for pension based on actual salary are entitled for such a right to change the option, and (2) the order is applicable equally to all the members in the exempted as well as unexempted trusts

In view of the above, it is our humble prayer that the EPS 95 members shall not be compelled to go for further litigation, and that necessary corrective orders be released immediately.

Thanking you,

Yours faithfully,
Secretary General, NCOA

→ Copy: 1. Shri. Bandaru Dattatreya, Hon'ble Minister of Labour and Employment
2. Shri. N.K. Premachandran, M.P.

