



# All India RRB Officers' Federation (AFFILIATED TO AIBOC)

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Circular # 09:2018

31<sup>st</sup> January 2018

All Affiliates/ Members  
(Please re-circulate)

**ALLOWING MEMBERS OF EPS 1995 THE BENEFIT OF ACTUAL  
SALARY IN PENSION FUND EXCEEDING WAGE LIMIT CAP FROM THE  
EFFECTIVE DATE RETROSPECTIVELY AS PER THE HON'BLE SC ORDER**

The leadership of the Federation consisting of Com. R.G. Makhija, President, Com. Srijan Pal, Vice-President and Com. S.K. Bhattacharjee, General Secretary held detailed talks with Shri Parag Verma, Addl. PF Commissioner and Shri Manoj Shankar, Regional PF Commissioner II in Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi on 30<sup>th</sup> Jan. 2018 morning.

In view of several messages, enquires and clarifications sought for by officers and employees in regard to the order issued by Hon'ble Supreme Court in SLP No. 33032-33033 of 2015 and Civil Appeal No(s) – 10013-10014 of 2016 arising out of SLP No. 33032-33033 of 2015 there was lot of confusions created in regard to the applicability of the order to retired officers and employees of RRBs.

While reproducing the circulars issued by Employees' Provident fund Organisation, New Delhi vide no Pension – 1/12/EPS Amendment/96/Vol. II dated 23.03.2017 and Pension – 1/12/EPS Amendment/96/Vol. II dated 31<sup>st</sup> May, 2017, we would like to make it very clear that the Pension stipulated by Hon'ble Apex Court is one time measure and shall be applicable to those officers and employees working in RRBs where both employer RRBs and the officers and employees contributed the entire amount @ 12% of BP + DA irrespective of ceiling of Rs. 5000/- or Rs. 6500/- as on the cutoff date stipulated by the Hon'ble Supreme Court. Employees' Pension Scheme remittances are being made by the establishments and not by the exempted Trusts. As such if establishments with exempted trusts are allowed to make balance remittances on full salary to the Employees Pension Scheme afresh, the same will have to be considered for un-exempted establishments also. It is not contemplated in the judgement.

Friends, the order of the Apex Court and the circular issued by EPFO make the officers and employees eligible to get Pension on the basis of actual BP + DA and not according to the ceiling amount only in exceptional cases of RRBs where both the employer and employees contributed 12% of the actual BP + DA without taking into consideration the ceiling. We feel such RRBs are not there. Hence, the unexpected hope and aspirations raised by some quarters are unfounded and confusing. We condemn the attempt of certain Trade Unions in RRBs to cultivate the hope amongst officers and employees for their political and Trade Union interest.

Friends, you can be rest assured that based on our discussion with Joint Secretary, DFS on 30<sup>th</sup> instant the Pension at par is expected to be made available to all officers and employees in RRBs at the earliest.

With greetings,

(S.K. Bhattacharjee)  
GENERAL SECRETARY

Telephone: 26196236



कर्मचारी भविष्य निधि संगठन  
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)  
**EMPLOYEES' PROVIDENT FUND ORGANISATION**  
(Ministry of Labour & Employment, Govt. of India)

मुख्य कार्यालय / Head Office  
भविष्य निधि भवन, 14-भोकाजी कामा प्लस, नई दिल्ली-110 066  
Bhavishya Niidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi - 110 066.

No: Pension-I/12/33/EPF Amendment/96 Vol.II

To.

All ACCs (Zonal Offices)  
All Regional P.F. Commissioner (In-Charge of Regions),  
All officers-in-charge of SROs.

Dated:

31 MAY 2017

Subject:- Allowing members of the EPS'95 the benefit of the actual salary in the Pension Fund exceeding wage limit of either Rs. 5000/- or Rs. 6500/- per month from the effective date respectively as per the Hon'ble Supreme Court's order in Civil Appeal NO(S) 10013-10014 of 2016 arising out of SLP No. 33032-33033 of 2015 - reg.

Sir,

Please arrange to refer this office letter No. Pension-I/12/33/EPF/Amendments/96/Vol-I dated 23.03.2017 on the above cited subject. Many references have been received from field offices to confirm if the aforesaid circular dated 23.03.2017 is applicable to employees of EPF exempted establishments. In this context, it is informed as under:

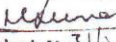
- i. Approval to comply with the order of the Hon'ble Supreme Court in the matter of Shri R.C. Gupta and others is only in respect of the Provident Fund & Pension members whose accounts are maintained by EPFO and whose P.F. Contribution on higher wages has been received by EPFO.
- ii. All the appellant employees in the aforesaid case before the Hon'ble Supreme Court were from unexempted establishment i.e. an establishment making P.F. contributions in the statutory Provident Fund managed by EPFO. The Employer's contribution of 12% under the Act in respect of the said employees was on actual salary and not on the ceiling limit of either Rs.5,000/- or Rs.6500/-.
- iii. Exercise of option under Para 26 (6) of the EPF Scheme, 1952 is a precursor to exercise of option under proviso to clause 11 (3) of the pension scheme. The appellant employees in the aforesaid case had exercised option under para 26 (6) of the EPF Scheme and contribution on full salary was received in the statutory Provident Fund.
- iv. Employees' Pension Scheme remittances are being made by the establishments and not by the exempted Trusts. As such if establishments with exempted trusts are allowed to make balance remittances on full salary to the Employees Pension scheme afresh, the same will have to be considered for unexempted establishments also. It is not contemplated in the judgment.
- v. In the case of exempted establishment the Provident Fund and Pension Fund are managed by separate legal entities. The Provident Fund of employees of exempted establishments are managed by Exempted Trusts and Pension Fund is managed by EPFO. As such, adjustment of contribution from Provident Fund Account to Pension Account as contemplated in the judgment is not possible.

(2)

The matter was placed in the 40<sup>th</sup> PEIC meeting. As decided in the 40<sup>th</sup> meeting of the PEIC the matter will be placed before the CBT. In the interim, it is advised that no member of EPS, 95 whose contribution on full salary has not been received in the account of the EPFO at the respective periods of contribution, shall be eligible for the benefits contemplated in the judgment as per the aforesaid Hon'ble Supreme Court order.

(This issues with the approval of CPFC)

Yours faithfully,

  
(Mukesh Kumar)

Regional PF Commissioner-1 (Pension)





कर्मचारी भविष्य निधि संगठन  
(अथवा अर्थ, रोजगार, संसाधन, भारत सरकार)

**EMPLOYEES' PROVIDENT FUND ORGANISATION**  
(Ministry of Labour & Employment, Govt. of India)  
मुख्य कार्यालय / Head Office

भविष्य निधि भवन, 14-भिकारजी कामा प्लेस, नई दिल्ली-110 066  
Bhavishya Nidhi Bhawan, 14, Bhikarji Cama Place, New Delhi - 110 066.

No: Pension-1/12/33/EPS Amendment/95/Vol.II

Dated: 23-03-2017

To,

AR Regional P.F. Commissioner,  
Regional Office/Sub-Regional Office.

31/03/17

23/03/17

**Subject:** Allowing members of the Employees' Pension Scheme, 1995 the benefit of the actual salary in the Pension Fund exceeding wage limit of either Rs. 5000/- or Rs. 6500 per month from the effective date respectively as per the Hon'ble Supreme Court's order in SLP No.33032-33033 of 2015 - Regarding.

Sir,

The matter of determination of pensionable salary exceeding statutory wages ceiling and exercise of option under deleted proviso to Para 11(3) of the EPS, 95 was examined in the light of the Hon'ble Supreme Court's Order in SLP No.33032-33033 of 2015.

2) The Hon'ble Apex court in SLP No.33032-33033 of 2015 observed 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. It has further been observed that a beneficial Scheme, 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. 5000/- or Rs. 6500/- per month, as the case may be.

In a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, the Provident Fund Commissioner could 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 benefits 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.

Thus a member contributing to the Provident Fund on the wages exceeding the statutory ceiling or who had contributed to the Provident Fund on the wages exceeding the Statutory ceiling cannot be debarred from exercising the option to contribute on such higher wages to the pension fund. (Copy of the order of the Hon'ble Supreme Court enclosed).

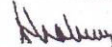
3) Accordingly a proposal was sent to MOL&E to allow members of the Employees' Pension Scheme, 1995 who had contributed on higher wages exceeding the statutory wage ceiling of Rs. 6500/- in the Provident Fund to divert 8.33% of the salary exceeding Rs 6500/- to the Pension Fund with up to date interest as declared under EPF Scheme, 1952 from time to time to get the benefit of pension on higher salary on receipt of joint option of the Employer and Employee.

4) The MOL&E vide letter dated 16.03.2017 has conveyed its approval to allow members of the Employees' Pension Scheme, 1995 who had contributed on higher wages exceeding the statutory wage ceiling of Rs. 6500/- in the Provident Fund to divert 8.33% of the salary exceeding Rs.6500/- to the Pension Fund with up to date interest as declared under EPF Scheme, 1952 from time to time to get the benefit of pension on higher salary on receipt of joint option of the Employer and Employee. (copy enclosed for ready reference)

5) The officers in charge of all field offices are directed to take necessary action accordingly in accordance with the order of the Hon'ble Supreme Court in SLP No.33032-33033 of 2015 as approved by the Government and as per the provisions of the EPF & MP Act, 1952 and Schemes framed there under.

(This issues with the approval of CPFC.)

Yours faithfully,



(Dr. S.K. Thakur)

Addl. Central PF Commissioner, HQ(Pension)

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ACC HQ(IS) for information with request for making necessary changes in the Software.