



No. 500-85/CA-II/BSNL/EPF /2011/VOL VI

Dated 06/02/2018

To
The CGM
All BSNL Circles

Sub: Change for option for contribution in Employees' Pension Scheme.

Ref: This office letter No. 500-85/CA II/BSNL/EPF/2013/Vol. VI dated 30.03.2017(Available on BSNL Intranet).

This office issued instruction to the all CGMs to initiate the process of choosing the option of higher pension in consultation with the EPF Office vide this office letter referred above along with instructions issued by Head office EPFO, New Delhi Vide letter No. Pension-I/12/33/EPF Amendment/96/Vol.II/34007 dated 23.03.2017, directed to all regional P.F.Commissioner to allow members of the employee's pension scheme, 1995 the benefit of the actual salary in the pension fund exceeding wage limit of Rs.6500/- per month from the effective date respectively as per Hon'ble Supreme Court's order in SLP No. 33032-33033 of 2015 in case of R.C.Gupta & Ors. Etc.

It has come to notice to this office that in some circles EPFO authorities are not accepting higher contribution towards Employee's Pension Scheme. Due to which some direct recruited employees filed petitions in various Hon'ble High Courts. This case was taken up by this office with legal branch. In this regard, Legal Cell of BSNL Corporate Office vide their advisory no. BSNL/SECTT/13-2/2016 (Pt.) dated 05.02.2018 suggested, the following facts be made as preliminary submission in the response before the Hon'ble High Court:

- That contribution to the Employees' Pension Scheme, 1995 on actual salary (other than present ceiling i.e. Rs.6500 or Rs. 15000 as the case may be) was deleted w.e.f. 01.09.2014 with the notification No. GSR 609(E) dated 22.08.2014 and no fresh option could be exercised for contribution to EPS on actual salary.
- The aforesaid notification No. GSR 609 (E) dated 22.08.2014 was quashed by the Hon'ble Supreme Court in the matter of R.C. Gupta & Ors etc. etc. Vs Employees' Provident Fund Office & Ors. etc in SLP (C) Nos. 33032 & 33033 of 2015 on 04.10.2016. The Hon'ble Apex Court while allowing the appeal, directed that pension contribution on higher salary exceeding the statutory limit Rs.6,500/ Rs. 15,000, with the consent of their respective employer, employees may contribute @8.33% of the actual pay i.e. Basic + DA pay exceeding the wage limit. The Hon'ble Apex Court categorically held in Para 8 and 11 that;

Para 8 "..... 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 ceiling limit of Rs. 5,000/- or Rs. 6,500/- per month, as the case may be.”

Para 11 “..... 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 All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefited some of the employees.”

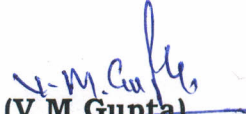
- Accordingly, in compliance with the Hon’ble Apex Court’s order dated 04.10.2016, the Employees’ Provident Fund Organization issued a circular No. Pension-I/12/33/EPS Amendment/96/Vol.II/34007 dated 23.03.2017 directing all its Officers In-Charge of Field Offices to take necessary action in accordance with the Hon’ble Supreme Court’s order in SLP Nos. 33032 & 33022 of 2015 as approved by the Government and the CPFC as per the provisions of the EPF & MP Act, 1952 and Schemes framed there under. While directing the Field Offices, a copy was also marked by EPFO to its ACC HQ (IS) for making necessary changes in the software and in the said circular dated 23.03.2017 it was stated that, “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.”
- Pursuant to EPFO’s circular dated 23.03.2017 issued in compliance of Hon’ble Apex Court’s order, BSNL Management also issued a circular No.500-85/CA II/BSNL/EPF/2013/Vol VI dated 30.03.2017 advising all concerned for initiating the process of choosing the option of higher pension in consultation with the EPF office.
- The EPFO offices have so far not provided any specific form for exercising the option. However, to comply with the circular the applications duly consented by both employer and employee(s) were submitted for diverting higher contribution exceeding the wage limit @ 8.33% of actual Basic Pay + DA towards EPS to the respective Regional Provident Fund Commissioners’ offices.
- Maharashtra and Gujarat EPFOs have accepted the options (as per letter No. AO/MHTC/Higher-Pension/2017-18/15 dated 15.01.2018 of Maharashtra Circle) for higher contribution in order to allow employees to avail higher pension benefit based on contribution @8.33% of their actual Basic Pay + DA exceeding wage limit of Rs.15,000/-. Whereas in Madhya Pradesh Circle, the Regional Provident Fund Commissioner, Bhopal did not accept the same, which is apparently in defiance of EPFO’s own circular dated 23.03.2017 as well as in contempt of Hon’ble



Apex Court's judgment dated 04.10.2016 in SLP Nos. 33032 & 33022 of 2015.

- Further it is significant that, pursuant to the Article 141 of the Constitution of India, law laid down by the Hon'ble Supreme Court shall be binding on all Courts within the territory of India.

In the aforesaid background, prayers be made before the Hon'ble Court(s) that, (i) the orders of respective Regional Provident Fund Commissioners rejecting the option(s) be quashed and also, (ii) the CPFC and RPFCS be mandated to implement the Hon'ble Apex Court's order in the matter of RC Gupta & Ors etc. Vs EPFO &Ors. etc.


(V M Gupta)
DGM (CA III)

Copy for information and necessary action please

- 1) IFAs of All Circles
- 2) DGM (R & P), BSNL CO, New Delhi