REPORT OF
THE COMMITTEE TO FACILITATE
DECISION ON
THE ISSUE OF GRANT OF
NON-FUNCTIONAL SELECTION
GRADE (NFSG)
TO RPFC-I IN EPFO

FEBRUARY 2020
FOREWORD

Ministry of Labour and Employment, Government of India constituted a Committee to facilitate decision on the issue of grant of Non-Functional Selection Grade (NFSG) to the officers in the Regional Provident Fund Commissioner -I (RPFC-I) grade of the Commissioner Cadre of the Employees' Provident Fund Organisation (EPFO) vide Order No. A-12018/2/2018-SS-I(Pt.) dated 01.01.2020 (Annexure-1). The composition of the Committee was as under:

1. Smt. Anuradha Prasad, Additional Secretary (L&E) -Chairperson
2. Ms Sibani Swain, AS & FA (L&E) -Member
3. Shri Sunil Barthwal, CPFC, EPFO -Member
4. Shri Rahul Bhagat, Director (Social Security) -Member Secretary

The term of reference of the Committee was to examine in detail all the facts of the case and the opinions received from various Ministries/Departments and give their recommendations. The Committee was expected to make its recommendations by 15.01.2020. However, the Committee was granted extension of time up to 14.02.2020 to make its recommendations.

The Committee considered the issue in the light of the extant government instructions, decisions of EC, CBT, verdict of Hon'ble High Court of Punjab and Haryana and Hon'ble CAT, Chandigarh Bench, audit para objections, et al. It also took into consideration the prevalent stagnation in the Commissioner cadre of EPFO in view of the skewed cadre structure. The Committee also met the representatives of the EPF Officers' Association.

The Committee finalised its report on this ........ day of February, 2020 at New Delhi.

(Anuradha Prasad)
Additional Secretary & CVO (L&E)
Chairperson

(Rahul Bhagat)
Director (Social Security)
Member Secretary

(Sibani Swain)
Additional Secretary & FA (L&E)
Member

(Sunil Barthwal)
CPFC, EPFO
Member
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CHAPTER 1

INTRODUCTION

1.1. Ministry of Labour and Employment, Government of India constituted a Committee (Annexure-1) under the Chairpersonship of Smt. Anuradha Prasad, Additional Secretary, L&E. The Committee consisted of the following members:

1. Ms Sibani Swain, AS & FA, L&E – Member;
2. Shri Sunil Barthwal, CPFC, EPFO – Member;
3. Shri Rahul Bhagat, Director – Member Secretary.

1.2. The Committee was constituted to facilitate decision on the issue of grant of NFSG to officers in the RPFC-I grade in the Commissioner cadre of EPFO.

1.3. The Committee was given a time period of 15 days from its constitution to submit its recommendations. Later on, an extension in time limit was sought by the Committee for submission of its recommendations. The Committee finalised its report on this ........day of February, 2020 at New Delhi.
CHAPTER 2

BACKGROUND

2.1. The Central Board, Employees’ Provident Fund (EPF) is an autonomous organisation set up under Section 5A of the Employees’ Provident Funds and Miscellaneous Provisions (EPF and MP) Act, 1952. The EPF and MP Act, 1952 is a welfare legislation enacted for the purpose of instituting provident funds, pension fund and deposit linked insurance fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies. Presently, the following three Schemes are in operation under the Act through the Employees’ Provident Fund Organisation (EPFO): (a) Employees’ Provident Funds Scheme, 1952; (b) Employees’ Deposit Linked Insurance Scheme, 1976; and (c) Employees’ Pension Scheme, 1995. In order to cater to the stakeholders, EPFO is presently having 21 Zonal Offices and 135 Regional Offices across the country with pan India coverage.

2.2. Appointments and service conditions of officers and employees of the Central Board, EPF are governed by section 5D of the EPF & MP Act, 1952 read with paragraph 22A of the EPF Scheme, 1952.

2.3. Sub-section 7(a) of the Section 5D of the EPF & MP Act, 1952 states:

“The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:
Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.”

2.4. Paragraph 22A of the EPF Scheme, 1952 states:

“Appointment of officers and employees of the Central Board
The power of appointment vested in the Central Board under sub-section (3) of section 5D of the Act shall be exercised by the Board in relation to posts equivalent to Joint Secretary of the Government of India.”

2.5. The establishment related expenditures of the EPFO are met from the administrative charges levied as proportion of total wages and paid by the employers. There is no funding from the Consolidated Fund of India. However, the Government contributes 1.16% of wages (upto Rs. 15000 per month) of the employees under the Employees’ Pension Scheme, 1995. Similarly, the
Government also bears the differential amount of payment of minimum pension of Rs. 1000 per month under EPS w.e.f. 01.09.2014.

2.6. The issue is regarding the grant of Non-functional Selection Grade in the level 13 (Grade Pay of Rs. 8700) of the pay matrix to the eligible officers of EPFO in the Commissioners' Cadre.

2.7. The present composition of the Commissioner Cadre in EPFO is shown in the table below:

<table>
<thead>
<tr>
<th>Name of Posts</th>
<th>Grade Pay (Rs.) as per 6(^{th}) CPC</th>
<th>Level in the Pay Matrix as per 7(^{th}) CPC</th>
<th>No. of posts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional CPFC (HQ)</td>
<td>10000</td>
<td>Level 14</td>
<td>13</td>
</tr>
<tr>
<td>Additional CPFC</td>
<td>8900</td>
<td>Level 13 A</td>
<td>32</td>
</tr>
<tr>
<td>Regional PFC-I</td>
<td>7600</td>
<td>Level 12</td>
<td>239</td>
</tr>
<tr>
<td>Regional PFC-II</td>
<td>6600</td>
<td>Level 11</td>
<td>299</td>
</tr>
<tr>
<td>Assistant PFC</td>
<td>5400(RB-3)</td>
<td>Level 10</td>
<td>452</td>
</tr>
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CHAPTER 3

NFSG IN GOVERNMENT

3.1. Pursuant to the recommendations of the Fourth Central Pay Commission, the Non-Functional Selection Grade (NFSG) was granted in all organised Group ‘A’ Central Services subject to the conditions as prescribed by the Department of Personnel and Training (DoP&T) and modified from time to time.

3.2. Accordingly, the scheme of NFSG, has been in existence since 1987, vide DoPT O.M. No. 19/1/86-PP dated 14.8.1987 (Annexure-2), and the conditions for applicability are mentioned as follows:

(i) The number of posts in NFSG shall be equal to 30%* of the senior duty posts (i.e. all duty posts at the level of Senior Time Scale and above in the cadre);

(ii) There shall be no increase in the overall strength of the cadre;

(iii) The officer shall first hold the post in the basic grade of Junior Administrative Grade (JAG) before he could be considered for appointment to NFSG;

(iv) Since NFSG is a segment of JAG, the strength in NFSG shall not exceed the number of posts available in JAG;

(v) No member (officer) of the Service shall be eligible for appointment to NFSG until he has entered the fourteenth year of service on the 1st January of the year calculated from the year following the year of examination on the basis of which the member was recruited;

(vi) Appointment to NFSG shall be made subject to suitability in terms of DoP&T O.M. No. 28038/1/88-Estt. (D) dated 09.10.1989; and

(vii) Recommendation regarding appointment to NFSG shall be made by a Committee to be constituted internally.

3.3. Initially, the number of posts was 15%, and vide DoPT’s O.M. dated 06.06.2000, it was decided that in the case of the organised Group ‘A’ Central Services, the existing ceiling of 15% in the case of NFSG shall, with prospective effect (from the date of issue of this Office Memorandum), be increased to 30%.

3.4. Recently, in July, 2019 two services, namely the Central Armed Police Forces (CAPFs) and Indian Railway Protection Force (RPF) Service have been conferred the status of Organised Group ‘A’ Services by the Government, thereby paving the way for applicability of the Non-Functional Financial Upgradation (NFFU) and the NFSG scheme in these two services. NFFU (or NFU) is another kind of non-functional upgradation in which, as per DoPT’s O.M. No. AB.14017/64/2008-Estt.(RR) dated 24.04.2009 (Annexure-3), “Whenever an Indian Administrative Services Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay band 3 or Pay Band 4, the officers belong to batches of Organised Group A Services that are senior
by two years or more and have not so far been promoted to that particular grade would be granted the same grade on non-functional basis from the date of posting of the Indian Administrative Service Officers in that particular grade at the Centre.”
CHAPTER 4

IMPLEMENTATION OF NFSG IN EPFO AND CAT CASE OF 2011

4.1. The Executive Committee, CBT, EPF, on 13.08.1999, considered and accepted (Annexure-4) the following recommendations of the Sub-committee CBT, EPF constituted for examining representations of employees of EPFO regarding Grievances/Anomalies in the implementation of Vth Central Pay Commission:

(i) The Sub Committee recommended that consistent with the instructions of the Department of Personnel & Training, 15% of senior duty posts (i.e. RPFC Grade-II and above) be constituted into Selection Grade posts (pay scale Rs. 14300-400-18300) and the appointment to these posts be done by promotion as per the procedure prescribed by the Department of Personnel & Training.

(ii) As the incumbents in the posts are to supervise the work of officers in the grade of Junior Administrative Grade as well as Officers in the Non-Functional Grade, the anomaly need to be rectified by placing the posts of Addl CPFC and FA & CAO in the appropriate pay scales recommended by the Fifth Central Pay Commission and implemented by the Central Government. In view of the above, the Sub Committee recommends cadre structure/revised scales for the EPFO officers (Commissioners’ Cadre) and for the post of FA & CAO as under:-

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<tbody>
<tr>
<td>(i)</td>
<td>CPFC</td>
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<tr>
<td>(ii)</td>
<td>FA &amp; CAO</td>
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<td>(iii)</td>
<td>Addl. CPFC</td>
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<td>(iv)</td>
<td>Non-functional Selection Grade for RPFC’s</td>
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<td>(v)</td>
<td>RPFC Grade-I (JAG Scale)</td>
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<td>RPFC Grade-II</td>
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<td>APFC</td>
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- Rs. 18400-500-22400
- Rs. 16400-450-20000
- Rs. 16400-450-20000
- Rs. 14300-400-18300
- Rs. 12000-375-16500
- Rs. 10000-325-15200
- Rs. 8000-275-13500

4.2. The Ministry found the decision of the Executive Committee contrary to the provisions of Paragraph 22-A of the EPF Scheme which empowers the Central Board to make appointments in relation to the posts carrying the maximum of scale of pay of Rs. 14300-18300 only and requested EPFO to keep the implementation of the decision in point no. (ii) above in abeyance. Finally, the proposal was rejected by the Ministry, “in view of inadequate functional justification and repercussion on similar organisations” and it was communicated to EPFO vide this Ministry’s letter no. A-11014/1/2000-SS-I dated 05.02.2001.

4.3. EPFO, vide letter dated 01.01.2004, submitted a proposal for grant of NFSG to RPFC-I in EPFO. The Ministry, vide letter dated 28.01.2004, observed that constitution of NFSG in the scale of pay of Rs. 14,300-18,300 might lead to practical and administrative difficulties in the functioning of the organisation because EPFO already had functional grade of Addl. CPFC in that scale of pay. EPFO replied vide their letter dated 14.06.2004, denying any administrative difficulties in granting NFSG.

The proposal for grant of NFSG was examined in the Ministry in consultation with Integrated Finance Division and the observations of the IFD were forwarded to EPFO on 05.10.2005. EPFO, vide their letter dated 23.11.2005, provided justification for their proposal for
grant of NFSG. The Ministry, vide letter dated 30.01.2006 conveyed the approval of Hon'ble LEM/Chairman, CBT (EPF) to operate 29 posts (15% of Senior Duty Posts) of RPFC-1 in the NFSG of Rs. 14300-18300 with immediate effect, i.e. 30.01.2006 (Annexure-5).

4.3.1 The file in which the proposal of EPFO was examined is not traceable in the Ministry. The information produced above has been gathered from the correspondences between Ministry and EPFO used to constitute the existing file on the matter.

4.4. **CAT case of 2011**: An original application was filed before CAT, Chandigarh Bench in 2010 by Shri A. K. Chandok regarding the retrospective applicability of NFSG in the Commissioner cadre w.e.f. 13.08.1999, i.e. the date of approval of EC, CBT. The Hon'ble CAT, in its order dated 25.02.2011 (Annexure-6), observed the following:

"7. A perusal of the above quoted provision of Section 5D(7) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 leaves no manner of doubt that it is the Board of Trustees which is the final authority qua the determination of the service conditions of the Provident Fund Commissioners (be it the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner or any other officers and employees of the Central Board). The Central Government would necessarily come in where the Central Board is of the opinion that it is necessary to make a departure for the said rules or orders in respect of any of the matters aforesaid. The above quoted provision also provides that the conditions of service of the above-indicated categories of officers and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scales of pay. Thus, it is only when a departure from the rules aforementioned is envisaged that the Board would be obliged to obtain the prior approval of the Central Government.

8. In the facts and circumstances of this case, an instance of departure from the rules could be envisioned only when the Central Board of Trustees recommends a higher grade of pay or special pay etc. to a category of employees whose counterparts in the Central Government are not enjoying the same. In this case, it is common ground that a non-functional selection grade had been allowed to Group A officers of the Government of India. It is further apparent, from the pleadings raised by the parties, that the Central Board of Trustees agreed to the implementation of the 5th CPC recommendations to the employees of the respondent Organization in to. The only exception was the non-functional selection grade, the grant thereof was not decided upon by the Central Board of Trustees at a point of time when the decision was taken to implement the recommendations made by the 5th CPC. In common parlance, a decision had to be taken by the Central Board Trustees about the grant or otherwise of the non-functional selection grade to the categories of employees of the respondent organization, corresponding to their counterparts in the Central Government. If the Board were to agree to implement the non-functional selection grade, it was not at all obliged to make a reference to the Central Government or to obtain prior approval therefor. At the same time, the prior approval of the Central Government was compulsive in case the Central Board of Trustees were to refrain from implementing the recommendations of the 5th CPC qua the grant of non-functional selection grade to the relevant categories of employees.
14. In the light of the aforementioned discussion, the O.A. shall stand allowed. While invalidating the fixture of the cut-off date by the Government of India for implementation of the non-functional selection grade with immediate effect, we would order that the respondents shall make the relevant grade available to the entitled categories of employees with effect from 13.8.1999 i.e. the date from which the Central Board of Trustees had recommended the grant thereof."

Thus, the Chandigarh Bench allowed the O.A., directing the respondents to make the relevant grade available to the entitled categories w.e.f. 13.08.1999, i.e. the date of approval of the EC, CBT.

4.5. **High Court’s order:** The aforesaid order of CAT was challenged before the Hon’ble High Court of Punjab and Haryana in CWP No. 8438/2011. The Hon’ble High Court vide order dated 12.05.2011 ( Annexure-7 ) upheld the order passed by the Hon’ble CAT, referring to the above paragraphs of CAT’s order dated 25.02.2011 and stating that:

"2. The aforesaid paras clearly propound the proposition that no permission from the Central Government was required and the original applicant-respondent was entitled to grant of NFSG as was approved by the Central Board of Trustees. There is, thus, no merit in the writ petition and the order passed by the Tribunal is wholly within the parameters of Section 5D(7) of the 1952 Act.
3. Accordingly, the present writ petition fails and the same is dismissed."

4.6. The Ministry examined the matter in view of the judgement dated 25.02.2011 of Hon’ble CAT, Chandigarh Bench, upheld by the Hon’ble High Court of Punjab and Haryana on 12.05.2011 and referred the matter to LA (L&E) for his advice whether an SLP can be filed before Hon’ble Supreme Court of India or not. Thereafter, LA (L&E) referred the matter to the Addl. Solicitor General of India, who opined that the approach of the High Court is justified and reasonable. Therefore, it is not a fit case for filing Special Leave Petition. (Ministry’s letter No. S-38016/50/2008-SS-I dated 29.08.2011).

4.7. Meanwhile, on 14.07.2011, in the 72nd meeting, the EC, CBT approved the enhancement of the ceiling of NFSG to the extent of 30% of the senior duty posts in accordance with the DoPT’s O.M. dated 06.06.2000. Thus, the scheme of NFSG was in force to the extent of 30% of SDP w.e.f. 14.07.2011.

4.8. Subsequently, vide letter dated 29.08.2011, the Ministry conveyed the following to EPFO:

"... EPFO is requested to implement the order dated 25/02/2011 passed by the Hon’ble CAT, Chandigarh Bench i.e. NFSG to the extent of 15% of the number of Senior Duty Posts may be granted w.e.f. 13/08/1999 i.e. the date of approval of the same by the Executive Committee, CBT, EPF. Further, the NFSG to the extent of 30% of the number of Senior Duty Posts has been approved by the EC, CBT as per Government of India instruction. EPFO is therefore requested to implement the same w.e.f. the date of approval by the Executive Committee, CBT, EPFO within the powers of CBT as directed in CAT order dated 25/02/2011."

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4.9. Consequent to the above mentioned decision, a meeting of the Screening Committee was held on 31.10.2011 which recommended year-wise panel for placement of RPFC-I officers in NFSG for the vacancy years from 1999 to 2011. Thus, 127 officers were granted the benefits of NFSG by EPFO vide order dated 02.01.2012 and the benefits of the scheme were given w.e.f. 13.08.1999. Further, another 19 officers were granted NFSG vide order dated 23.08.2013.

4.10 The analysis of the order of Hon’ble CAT and that of Hon’ble High Court shows that the Courts have noted the approval of Central Board of Trustees in their judgments. But, while examining the minutes of the Executive Committee, CBT dated 13.08.1999 (Annexure-4), it was observed that the said minutes mention the approval of the EC, CBT and not of the CBT as observed by the Courts.

4.11. The NFSG scheme in EPFO was discontinued from 2014 onwards following audit objections in the Audit Report for the year 2013-14, conveyed by DGACR vide letter No. AMG-IV/IR/3-52/EPFO/2015-16/250 dated 04.06.2015. However, the officers granted NFSG before 2014 continued to receive the benefits of the scheme.
CHAPTER 5

AUDIT OBJECTIONS

5.1.1. DGACR, vide letter dated 04.06.2015, served audit objections (Annexure-8) with regard to the irregular grant of Non-functional Selection Grade in EPFO and estimated an amount of Rs. 1.31 crore paid from the date of grant of NFSG till December, 2014. Consequently, the grant of NFSG for the year 2014 onwards has been put in abeyance by EPFO (as stated in EPFO’s note attached to an e-mail dated 07.03.2018 (Annexure-9)).

5.1.2. DGACR found the grant of NFSG (Rs. 37400-67000 + Rs. 8700 GP) to RPFC-I officers irregular in view of the following facts:

1) Central Service Group 'A' where the scale of Rs. 14300-18300/- exists as part of the cadre structure on functional basis will not be eligible to have non-functional Selection Grade unless the Cadre Controlling Authorities decide to do away with the functional Selection Grade. In EPFO, five functional posts of FA&CAO, ADDL CPFC-II, Chief Engineer, Chief Vigilance Officer, Director (Vigilance) exist which have a total sanctioned strength of nine.

2) The Pay Commission stipulated that the officers to be placed in the Selection Grade should have reached the maximum of the Junior Administrative Grade and remained there for two years. However, in EPFO, the eligibility to NFSG is being granted to RPFC (Gr.I) in the corresponding JAG pay scale of Rs. 15,600-39,100 + G.P. of Rs. 7600/- irrespective of their period of service in RPFC Gr.I. Out of 22 officers who had been granted NFSG during the period 13.6.1999 to 1.8.2013, it was noticed that six officers were granted NFSG w.e.f the date of their promotion as RPFC-I. In respect of 11 officers, NFSG was granted between periods ranging from 2.5 months to nearly 3 years after their promotion to the post of RPFC-I. Data in respect of five offices was not furnished.

5.1.3. DGACR, further mentioned: "Due to irregular grant of NFSG to 22 officers in EPFO Headquarters, an amount of Rs. 1.31 crore was paid from the date of grant of NFSG till December 2014/date of retirement/promotion to the post of ACC (Annexure-I) in excess of the admissible pay and allowances to them. EPFO may take action to stop this irregular practice of granting NFSG henceforth. The information relating to field offices has been called from and is awaited. EPFO may issue instructions to their branch offices to review similar cases and point out the excess payment under intimation to Audit."

5.2.1. Subsequent to the Audit objection, EPFO issued an order for restructuring (detailed in the next chapter) of different cadres of the organisation (Annexure-10) and the functional post in the pay scale of Rs. 14300-18300 was done away with, as ACC-II (Pay level-13) and ACC-I (Pay level-13A) were merged into the grade of ACC (in pay level-13A).

5.2.2. Thereafter, EPFO, vide letter dated 10.03.2017, submitted its reply to Audit Memo no. 30 dated 03.03.2017 with reference to the objections in the audit report for the year 2013-14.
regarding the grant of NFSG. DGACR served a reminder dated 10.03.2017 which was replied by EPFO vide their communication dated 15.03.2017.

5.2.3. A meeting was held on 02.08.2017 in the Parliament in the Chamber of the then Hon'ble Minister of State (I/C) for Labour and Employment wherein the matter regarding the grant of NFSG post cadre restructuring was discussed. The following decision was conveyed to EPFO vide letter no. A-26022/1/2017-SS-I dated 07.08.2017 (Annexure-11):

"It was decided to delink the cases of NFSG granted prior to Cadre Restructuring from the cases due after cadre restructuring on 27.12.2016 due to audit objection. The cases of NFSG may kindly be processed accordingly as per sanctioned strength in cadre restructuring dated 27.12.2016."

5.3. **Present Status of Audit Para:** Later on, vide Ministry's letter dated 26.04.2018, EPFO was requested to furnish the current status of audit para. In response, EPFO, vide letter dated 04.07.2018, informed that "a fresh audit para has been raised in their [DGACR's] report in 'Part-II-Audit Findings, Part-II(A), Para-1. "Irregularity Grant of NFSG". The fresh audit objections were raised vide DGACR's letter dated 05.04.2018 (Annexure-12).

5.4. DGACR, in its aforesaid letter dated 05.04.2018, reiterated its objections raised vide previous letter and observed "The above irregularity was brought to the notice of the authorities of EPFO vide inspection report of 2013-14 but no action has been taken by the organisation in view of the para. In this connection a Statement of Facts titled Irregular Grant of "Non-functional Selection Grade" in EPFO was issued on 16th May, 2017. During current audit memo no. 43 dated 21.2.2018 and [no.] 46 dated 21.2.2018 requisitioning related files, records and reply of the above SOF were issued. Reminder III dated 21.2.2018 and Reminder IV dated 26.2.2018 were also issued to follow up the memos but no reply till the close of audit." DGACR also mentioned:

"Further audit memo no. 48 dated 22.2.2018 was issued but the organization did not furnish reply to the following points

(i) Action taken by the authority in respect of the **recovery of payment** in excess of pay and allowances due to irregular grant of NFSG from the concerned officials.

(ii) Details of officers who had been granted NFSG during the period 13.8.1999 till date along with the details of amount paid."

5.5. EPFO, vide letter dated 04.07.2018 to the Ministry, informed that a fresh reply to the said audit para was furnished vide EPFO's letter dated 03.07.2018 (Annexure-13).
CHAPTER 6

CADRE RESTRUCTURING

6.1. EPFO, vide letter dated 08.07.2016, sent a proposal to the Ministry for cadre restructuring, approved by CBT in its 213th meeting. The proposal contained the different grades in the Commissioner cadre and the level of the pay matrix attached with the posts, along with the number of posts in each grade. EPFO had proposed the merger of RPFC-I and RPFC-II to form a single grade of RPFC with the strength to be 239. The phrase "includes NFSG" had been mentioned by EPFO prefixed before the pay band of Rs 15600-39100 plus Grade Pay 7600/- for the post of RPFC-I.

6.2. The aforesaid proposal of cadre restructuring was examined in the Ministry and a revised proposal was referred to Department of Expenditure for concurrence. The revised proposal, besides recommending the existing designation of RPFC-I to be retained, omitted the insertion of the phrase of "includes NFSG". As such, the Department of Expenditure examined the proposal without the provision of NFSG.

6.3. The Department of Expenditure, after examining the proposal, furnished the following clarifications/replies:

"(i) Financial implication of Rs. 48 crore.

The ministry of labour and employment has confirmed a financial implication of Rs. 48 crore on account of the cadre review exercise. While returning the proposal to the ministry of Labour and Employment to carry out the restructuring with the approval of the governing body of the EPFO and the Minister in-charge, this Department had conveyed that this exercise may be carried out at their end, (EPFO being an autonomous body) subject to absorbing the additional expenditure. Since the Ministry of Labour has stated that the extra expenditure of Rs.48 crore would be met from the internal resources of EPFO, this Department has no objection to this proposal.

(ii) Creation of 9 posts in the grade pay of Rs.10,000/-

As per Cadre Review guidelines, there is no bar on increase of posts at any level provided the organization provides matching saving and the total cadre strength is not increased. In the instant case, while 9 posts of ACC (HQ) are being created in the grade pay of Rs.10,000/- due to increased volume and range of EPF operations, it is seen that the total cadre strength has decreased. Therefore, the proposal falls within the cadre review guidelines. Hence, this Ministry has no objection to the creation of additional posts including 9 posts in the grade pay of Rs.10,000/- while carrying out the cadre restructuring of EPFO at their own end with the approval of Minister in-charge.

(iii) Government of India decision dated 17.04.1964:"

15
The Government of India decision quoted by the Ministry of Labour & Employment has been seen and it is clarified that the said decision concerns with only creation of posts separately and not as a part of restructuring of a cadre where increase, decrease, creation and upgradation of posts is permitted subject to matching savings being provided. Therefore, the said instructions are not applicable in cadre restructuring cases and hence in the instant case.

Keeping in view of the above clarifications, this Department reiterates its earlier stand that the proposal of Ministry of Labour regarding cadre restructuring of EPFO may be finalised at the Ministry’s own end with the approval of Minister of Labour & Employment."

6.4. Subsequently, vide letter dated 27.12.2016 (Annexure-14), the Ministry conveyed the following to EPFO:

"The Proposal of Organizational and Cadre Restructuring in EPFO as approved by the Central Board of EPF shall be subject to the following amendments in the proposal:

I. The designation of Regional Provident Fund Commissioner is replaced by Regional Provident Fund Commissioner-I Existing designation of Regional Provident Fund Commissioner-I and Regional Provident Fund Commissioner-II will continue to be used.

II. The designation of Deputy Provident Fund Commissioner be replaced by Regional Provident Fund Commissioner –II Deputy Provident Fund Commissioner as proposed by Central Board shall be replaced by Regional Provident Fund Commissioner-II in the organization.

III. The revised sanctioned strength of total posts of Regional Provident Commissioner –II shall be 299.

IV. The revised sanctioned strength of Assistant Provident Fund Commissioner shall be 452."

6.5. A comparative table of the cadre structure of the Commissioner's Cadre prior to and after cadre-restructuring (CR) is produced below:

<table>
<thead>
<tr>
<th>Name of Posts</th>
<th>Grade Pay (Rs.) as per 6th CPC</th>
<th>Level in the Pay Matrix as per 7th CPC</th>
<th>No. of Posts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional CPFC (HQ)</td>
<td>10000</td>
<td>Level 14</td>
<td>4</td>
</tr>
<tr>
<td>Additional CPFC-I</td>
<td>8900</td>
<td>Level 13 A</td>
<td>10</td>
</tr>
<tr>
<td>Additional CPFC-II</td>
<td>8700</td>
<td>Level 13</td>
<td>15</td>
</tr>
<tr>
<td>Additional CPFC</td>
<td>8900</td>
<td>Level 13 A</td>
<td>0</td>
</tr>
<tr>
<td>Regional PFC-I</td>
<td>7600</td>
<td>Level 12</td>
<td>59</td>
</tr>
</tbody>
</table>

16
<table>
<thead>
<tr>
<th>Regional PFC-II</th>
<th>6600</th>
<th>Level 11</th>
<th>226</th>
<th>299</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant PFC@</td>
<td>5400(PB-3)</td>
<td>Level 10</td>
<td>545</td>
<td>452</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>859</td>
<td>1035</td>
</tr>
</tbody>
</table>

- **Note:** ACC-I and ACC-II posts were merged and new post of Additional CPFC (ACC) was created.
- Includes two posts of CVO and FA&CAO
- @ filled up by promotion (50%) and DR (50%) by USPC

6.6. Following this, a reply to the audit objections dated 04.06.2015 was furnished to the DGACR by EPFO and it was requested to drop the said objections. Besides, as elaborated in paragraph 5.2.3, it was decided to delink the cases of NFSG granted prior to Cadre Restructuring from the cases due after cadre restructuring on 27.12.2016 due to audit objection.

6.7. Subsequently, the Hon’ble LEM recorded his minutes dated 30.11.2017 as below:

"Representatives of EPF officer association have met me several times and have requested inclusion of grant of NFSG in recruitment rules at the scale equivalent to Director (equivalent to 30% of senior duty posts) after entering 14th year of service. This may be processed accordingly and if in the light of Sec 5D(7) of EPF&MP Act, any approval is needed the same may be obtained immediately, if required."

6.8. **DoPT’s Advice in the Matter:** In view of the Hon’ble LEM’s minutes mentioned above, the Ministry sent the proposal of granting NFSG to RPFC-I to the DoPT vide ID note dated 07.02.2018. This was the first reference to DoPT after cadre restructuring in this regard.

6.8.1. **DoPT’s first advice:**

6.8.1.1. The DoPT, vide ID note dated 13.02.2018 (Annexure-15), opined as under:

"As stated in the paragraph 3 above, the instructions issued vide OM dated 6.6.2000 are applicable on organized Group ‘A’ Central Services. Further, the administrative Ministry in paragraph 2 of the note dated 30.01.2018 has stated that the Central Board, Employees Provident Fund (EPF) is an autonomous organization set up under Section 5A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The instructions issued by this Department not su moto applicable on autonomous bodies."

6.8.1.2 In view of the DoPT’s opinion in the matter, the proposal was proposed to be referred to the Department of Expenditure (through IFD), mentioning DoPT’s comments and the EPFO’s reply submitted to the audit objection in the audit report for the year 2013-14. IFD asked for the RRs of all the posts in the Commissioner cadre for vetting the proposal. The proposal was resubmitted on 27.03.2018. Thereafter, IFD, among other things, asked for the status of audit para objections vide their note dated 02.04.2018, which was communicated to EPFO on 26.04.2018. EPFO replied vide
letter dated 04.07.2018 and stated "...the DGACR has not dropped the audit para so far and a fresh audit para has been raised in their report in Part-II-Audit Findings, Part-II(A), Para-1. "Irregularity Grant of NFSG".". The fresh audit objections were raised vide DGACR's letter dated 05.04.2018. EPFO also mentioned that a fresh reply to the said audit para had been furnished vide EPFO's letter dated 03.07.2018 (Annexure-13). Vide the aforesaid letter dated 04.07.2018, EPFO further requested "The Ministry of Labour & Employment may indicate a suitable date and time to convene the meeting of the Screening Committee at an early date."

6.8.2. **DoPT's second advice:**

6.8.2.1. On the second instance of referral in Sept., 2018, to DoPT for advice in the matter, DoPT (vide note dated 10.12.2018), inter alia, opined as follows (Annexure-16):

"CRD is of the view that the claim of NFSG to the extent of 30% of SDP [Senior Duty Posts] for Regional Provident Fund Commissioner Grade I in the Commissioner cadre of EPFO on the ground of similar benefit to other Central Government employees is not appropriate as the orders for NFSG issued by Cadre Review Division are not uniformly applied to all the Central Government Employee and also have certain pre-conditions for its applicability. Regarding extension of benefit as departure from Government Rules, this Division does not support the proposal keeping in view the objectives/operation of NFSG, procedural and other requirements of formation of Central Group 'A' service or Central Organized Group 'A' Service."

6.8.2.2. The aforementioned advice was conveyed to EPFO in January, 2019.

6.8.3. **DoPT's third advice:**

6.8.3.1. The matter was referred again to DoPT in the wake of judgment of CAT, Chandigarh Bench in February, 2019 (detailed in the next chapter), when EPFO, vide letter dated 08.04.2019, requested the Ministry for the future course of action.

6.8.3.2. DoPT, vide note dated 08.07.2019 (Annexure-17), referred to its previous advice and opined as follows:

"4. It may be pertinent to mention that while conveying the comments of this Department on the last occasion, it was also observed that the orders of NFSG issued by Cadre Review Division are not uniformly applied to all the Central Government Employees and also have certain pre-conditions for its applicability. Moreover, as per the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 provides that the Central Board of Trustees is the competent authority in the matter of determinations of the service conditions of its employees. This has also been observed by the Hon'ble CAT while delivering the aforesaid order dated 08.02.2019 [25.02.2011].

5. In view of the above, this Department may not have anything more to add to its earlier advice. The file may accordingly be returned to the Administrative Department to decide upon the issue. The M/o L&E may consult the DoLA in this regard."

6.8.4. **DoPT's fourth advice:**
6.8.4.1. The matter was again referred to DoPT (in September, 2019) after taking the advice of the Legal Adviser (L&E) in view of the order dated 08.02.2019 of the Hon'ble CAT, Chandigarh Bench.

6.8.4.2. DoPT, in response, vide note dated 15.10.2019 (Annexure-18), furnished the following advice:

"2. The matter was refereed to this Department earlier also and comments/ views of this Department have already been furnished twice. Main points of the advice furnished by this Department were as under:-

i. The orders of NFSG issued by Cadre Review Division are not uniformly applied to all the Central Government Employees and also have certain pre-conditions for its applicability.

ii. The cadre in question is neither recognized as Central Group ‘A’ Service nor an Organised Group ‘A’ Service. No service would be considered as Organised Service unless it has been declared as such through the Established procedure.

iii. As such, the claim of NFSG to the extent of 30% of SDP for Regional Provident Fund Commissioner Grade-I in the Commissioner cadre of EPFO on the ground of similar benefits to other Central Government employees was not appropriate.

3. While furnishing the aforesaid views/ comments of this Department, it was also observed that as per the Employees’ Provident Fund & Miscellaneous Provisions Act, 1952, the Central Board of Trustees is the competent authority in the matter of determinations of the service conditions of its employees. This has also been observed by the Hon’ble CAT in its order dated 25.02.2011.

4. Accordingly, MoL&E was advised to decide upon the issue in consultation with DoLA and as a follow up, the M/o L&E has consulted the Legal Advisor, M/o L&E. This Department has no further comments to offer in the matter. As such, the file is hereby returned to M/o L&E."

6.9. Proposal to Department of Expenditure:

6.9.1. In view of the minutes dated 30.11.2017 mentioned in paragraph 6.7, DoPT’s advice elicited above and the CAT’s order dated 08.02.2019, the matter was referred to DoE, through IFD, for advice in the matter.

6.9.2. IFD made the following observations before referring the matter to DoE:

"i. It may be observed that in respect of Pay & Allowances, EPFO has adopted CCS Pay rules and the Board is competent to decide upon the pay of its officers. However, the point of doubt is that whether Board is competent enough to extend such benefits to its officers which are not uniformly applicable to all Central Govt officers and are subject to specific conditions.

ii. In view of the fact that for applicability of NFSG, there are certain pre-conditions, the point that whether the cadre of RPFC is fulfilling all the criteria(s) laid down for extension of such benefits need detailed examination."
iii. Hon'ble CAT, Chandigarh Bench vide its order 25.02.2011 also noted that, an instance of department from the rules could be envisioned only when the CBT recommends a higher grade of pay or special pay etc to a category of employees whose counterparts in the Central Govt are not enjoying the same. The Hon'ble court acknowledged that NFSG had been allowed to Gp A officers however, in view of DoPT's observations it seems that the fact that NFSG is allowed subject to 'Gp A organized service', and for other Gp A services, it may be extended after certain pre-conditions' remains unnoted."

6.9.3. In response, D/o Expenditure, vide UO No. 23(2)/E II(B)/2019 dated 05.12.2019 (Annexure-19) furnished the following comments in the matter:

"NFSG in this case of EPFO was allowed by Ministry of Labour and Employment in terms of their letter dated 31.01.2006 [30.01.2006]. At that time the Ministry of Finance, Department of Expenditure does not appear to have been consulted. It is also seen that Ministry of Labour decided to implement the order of Hon'ble Chandigarh Bench of CAT dated 25.02.2011 in terms of their letter dated 29.08.2011 and at that stage also, the Ministry of Finance, Department of Expenditure does not appear to be consulted. It is once again seen that the Ministry of Labour in terms of their letter dated 04.08.2017 [07.08.2017] allowed EPFO that the cases of NFSG may be proposed as per sanctioned strength in cadre restructuring dated 27.12.2016. Thus, the Ministry of Finance, Department of Expenditure was not consulted at any stage, especially at the primary stage of introduction of NFSG in this case. Secondly and more importantly, Department of Personnel and Training is the nodal Department on the issue of NFSG and as such, the action advised by Department of Personnel & Training in terms of Para 4 of their note on page 68/n may be taken. This Ministry has no further comments to add."
CHAPTER 7

CAT’s ORDER OF FEBRUARY, 2019

7.1. An O.A. dated 07.02.2019 in the matter, was filed by Shri Rakesh Kumar and Others before CAT, Chandigarh Bench. The application was to grant them NFSG w.e.f the date they are eligible to get the benefits in consonance with Ministry's letter dated 30.01.2006 and order dated 25.02.2011 of the Hon'ble CAT Chandigarh Bench.

7.2. The following order dated 08.02.2019 (Annexure-20) was passed by the Hon'ble CAT:

1. MA No. 060/00259/2019 is allowed and the applicants are allowed to join together to file this application.

2. The present O.A. has been filed by the applicants, who are Grade-I officers, working in the Employee Provident Fund Organization, seeking issuance of a direction to Respondents No. 2 and 3 to grant them the Non Functional Selection Grade (for brevity NFSG) in the scale of Rs.37400-67000 with grade pay of Rs.8700/-, after implementation of 6th CPC recommendations from the date of their eligibility, with all the consequential benefits. It is further prayed that the respondents be directed to implement the order dated 30.01.2006 (Annexure A-6) whereby approval was granted for the grant of NFSG in the Commissioner's Cadre of Employees Provident Fund Organization.

2. Learned counsel submitted that his claim is based upon the order passed in the case of A.K. Chandok Vs. Union of India & Others (O.A. No. 400/HR/2010 decided on 25.02.2011), as upheld by the Jurisdictional High Court by dismissing the CWP No.8438 of 2011 on 12.05.2011, filed by the respondents. He submitted that before approaching this Court, the applicants served representations dated 20.12.2017 and 23.12.2017 (Annexure A-12 colly) for grant of relevant benefits on the basis of judicial pronouncements in their favour, and the respondents have issued a letter dated 18.06.2018 stating therein that the matter is under active consideration. The contention of the learned counsel is that despite the judicial pronouncement in favour of the applicants, the respondents cannot possibly deny the benefit of the judgment to the applicants, who are similarly situated to the applicant in the case of A.K. Chandok (supra). Learned counsel prayed that since the representations filed by the applicants are pending consideration at the hands of the respondents and have not been answered till date, the applicants would be satisfied if a direction is issued to the respondents to consider and decide the claim of the applicants in the light of order passed by this Court in the case of A.K. Chandok (supra).

3. Issue notice to the respondents.

4. At this stage, Mr. Sanjay Goyal, Sr. SCCG, appeared and accepted notice on their behalf. He did not object to the disposal of the O.A. in the above manner.
5. In the wake of above, the O.A. is disposed of, in limine, with a direction to the respondents to consider and decide the indicated representations of the applicants while taking into consideration the ratio laid down in the case of A.K. Chandok (supra), which has been affirmed by the jurisdictional High Court also. The needful be done within a period of two months. If upon such consideration, the applicants are found similarly situated like the applicant in the relied upon case, the relevant benefits be granted to them, otherwise a reasoned and speaking order be passed thereon, with a copy to the applicants.

6. Needless to mention that the disposal of the O.A. shall not be construed as an expression of any opinion on the merits of the case. No costs."

7.3. **Action taken on CAT’s Order:** EPFO, vide letter dated 08.04.2019, had requested this Ministry to suggest future course of action. The matter was, therefore, referred to DoPT, in April, 2019, seeking their advice in view of the said order of the Hon'ble CAT. DoPT, in reply, vide note dated 08.07.2019 (third advice, paragraph 6.8.3.2), re-iterated its earlier stand. However, the Ministry was advised to consult the Department of Legal Affairs.

7.4. **Advice of Legal Adviser:** In response to the SS Division's note dated 12.07.2019, seeking the advice of the LA (L&E) in view of the CAT's order and the DoPT's advice, the following advice was tendered by the LA (L&E) on 28.08.2019 (Annexure-21):

"13. In view of the above facts, the department is advised to comply the CAT's order dated 08.02.2019 and dispose of the representation of the applicants immediately strictly taking into consideration ratio laid down in A K Chandok case for avoidance of contempt petition in the matter."
CHAPTER 8

CONSIDERATIONS BY THE COMMITTEE

8.1. **Sittings of the Committee:** The Committee held its first meeting on 06.01.2020 to discuss the background of the matter. Thereafter, it had sittings on 08.01.2020, 21.01.2020, 27.01.2020 and 06.02.2020 to deliberate further on the issue. All four members were present in the meeting on 08.01.2020 and 06.02.2020. The other meetings were attended by the representatives of CPFC, EPFO along with other members of the Committee.

8.2. There was also a letter received from the office bearers of the EPF Officers' Association, requesting to provide them with an opportunity to present their submissions to the Committee before the latter finalised their recommendations. Accordingly, they were given a personal hearing on 06.02.2020, in which the Committee heard the submissions of the Association. The representatives of the association made the submission (Annexure-22) for grant of NFSG on its own legal merit and submit a lawful & just report to the Hon'ble LEM.

8.3. **RECORDS CALLED FOR BY THE COMMITTEE:** While deliberating the different aspects related to the matter, the Committee found it pertinent to address the following aspects and consider the relevant records:

8.3.1. **Stagnation in the Commissioner Cadre:** EPFO was requested to furnish stagnation, if any, in the Commissioner Cadre after implementation of the Cadre restructuring Order dated 13.01.2017. The reply furnished by EPFO, vide letter no. HRM-I/D-18(1)2014/pt./1032 dated 21.01.2020 (Annexure-23) was put up before the Committee in its meeting dated 27.01.2020. In the reply, EPFO has stated that from among the RPFC-I belonging to 1999 batch and above, approx. 50 RPFCs-I would retire before getting any further promotion. Further, in view of the stagnation, the Committee also enquired whether the scheme of Modified Assured Career Progression (MACP) is applicable to the officers of the Commissioner cadre. In this regard, EPFO, vide letter dated 05.02.2020 (Annexure-24) stated that "no MACP has been granted to the officers who have joined the Organisation as Group 'A' Officer although the MACP has been granted to a few of those Group A Officers who had joined the EPFO initially as Group 'B' Officer i.e. Enforcement Officer/Accounts Officer."

8.3.2. **Relaxation in the recruitment rules:** EPFO was also requested to furnish information about the various grades in the Commissioner Cadre for which relaxation in the qualifying service, as per the Recruitment Rules, was given since the implementation of the Cadre restructuring order dated 13.01.2017. The reply vide EPFO's letter dated 23.01.2020 (Annexure-25) was also brought to the notice of the Committee in its meeting on 27.01.2020. The details are as under:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>From</th>
<th>To</th>
<th>No. of posts</th>
<th>Relaxation period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>RPFC-I</td>
<td>ACC</td>
<td>22</td>
<td>12 months</td>
</tr>
<tr>
<td>2</td>
<td>RPFC-II</td>
<td>RPFC-I</td>
<td>8</td>
<td>21 months</td>
</tr>
<tr>
<td>3</td>
<td>APFC</td>
<td>RPFC-II</td>
<td>81</td>
<td>12 months</td>
</tr>
</tbody>
</table>
8.3.3. **Records of the file in which the proposal for NFSG was processed by EPFO for approval of the Ministry:** In the meeting dated 27.01.2020, EPFO was requested to send their file in which the matter of grant of NFSG was processed by EPFO for approval of the Ministry in 2006.

8.3.4. **Action taken on audit para on irregular grant of NFSG:** EPFO, vide letter dated 04.07.2018 to the Ministry, had informed that a fresh reply to the said audit objection was furnished vide EPFO's letter dated 03.07.2018 (Annexure-13). The same letter (dated 03.07.2018) was furnished by EPFO on the Committee's enquiry about the latest status. However, the present status about the dropping of the said audit para is not clear to the Committee.

8.3.5. **Proposal of the Ministry referred to Department of Expenditure at the time of cadre restructuring:** The records of the file dealing with cadre restructuring was accordingly placed before the Committee for perusal.

8.3.6. **Draft model structure of the Commissioner Cadre:** While deliberating on the issue of stagnation in the Commissioner cadre, it was observed that the cadre structure was skewed. According to the Committee, the stagnation was attributable to this imbalance in the structure of the cadre. Accordingly, EPFO was requested to furnish a draft model structure of the Commissioner cadre. The said model structure was furnished by EPFO on 04.02.2020 (Annexure-26).
CHAPTER 9

OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE

9.1 The Committee noted that as per sub-section (7) of Section 5D of the EPF and MP Act, 1952, the method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay. However, where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government. In determining the corresponding scales of pay of officers and employees as above, the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

9.2 The Committee also noted that the Ministry of L&E, vide communication No. A-11013/1/2004-SS-I dated 30.1.2006, had conveyed the approval of Hon'ble LEM/Chairman, CBT (EPF) for operation of the scheme of grant of NFSG in the Commissioner's Cadre of the EPFO with immediate effect. Subsequently, following the order dated 25.02.2011 of Hon'ble CAT, Chandigarh Bench that was upheld by the Hon'ble High Court of Punjab and Haryana, the decision regarding NFSG was implemented retrospectively from 13.8.1999, i.e. the date from which the Executive Committee, Central Board of Trustees had recommended the grant thereof. This has been elaborated in paragraph(s) 4.4 and 4.5 of the Report.

9.3 While examining the minutes of the Executive Committee, CBT dated 13.08.1999 (Annexure-4) as referred to in the court judgments above (paragraphs 4.4 and 4.5 of the Report), the Committee observed that the said minutes do not mention the approval of the CBT as observed by the Hon'ble Courts. However, it was observed that the proposal was approved by EC in accordance with the power delegated to it by the CBT, in the minutes of 123rd meeting of the Central Board of Trustees. In the said minutes, EC was delegated the power in respect of "Framing/amending of the rules relating to method of recruitment, pay and allowances and other conditions of service of the officers and staff of the Employees' Provident Fund Organisation on the basis of the orders applicable to corresponding category of Government Servants." The Committee observed that the approval to the grant of NFSG by the EC under its delegation of power by the CBT does not conform truly to the broad purpose of delegation of power to the EC. The issue should have been brought before the CBT for its approval or it should have been ratified by the CBT after approval. Besides, the Committee has observed that the judgment dated 25.02.2011 of the Hon'ble CAT is based on the premise that the scheme of NFSG is applicable to all Group 'A' Central Government employees, which, as per DoPT's comments on several occasions (paragraph 6.8), is not the case. The scheme of NFSG is applicable to the Organised Group 'A' services only.

9.4 The Committee further observed that, as per EPFO's e-mail dated 03.07.2018 (Annexure-13), "...the grant of NFSG for the year 2014 onwards has been put in abeyance as an audit observation was communicated by the Inspection Team of the DGACR which had visited Headquarters for
conducting [audit] of the year 2013-14." The Audit, vide letter no. AMG-IV/IR/3-52/EPFO/2015-16/250 dated 04.06.2015 (Annexure-6), had found the grant of NSFSG irregular on two grounds:

(i) "Five functional posts of FA&CAO, ADDL. CPFC-II, Chief Engineer, Chief Vigilance Officer, Director (Vigilance) exist which have a total sanctioned strength of nine" and

(ii) "in EPFO, the eligibility to NSFSG is being granted to RPFC (Gr.I) in the corresponding JAG pay scale of Rs. 15,600-39,100 + G.P. of Rs. 7600/- irrespective of their period of service in RPFC Gr.I", which is not in consonance with the Pay Commission's stipulation that the officers to be placed in the Selection Grade should have reached the maximum of the Junior Administrative Grade and remained there for two years. (refer paragraph 5.1.2)

9.5 DGACR, in the aforesaid letter had observed that "Due to irregular grant of NSFSG to 22 officers in EPFO Headquarters, an amount of Rs. 1.31 crore was paid from the date of grant of NSFSG till December 2014/date of retirement/promotion to the post of ACC (Annexure-1) in excess of the admissible pay and allowances to them." Further, in its letter no. AMG-IV/IR/5-24/EPFO(HQ)/2017-18/2 dated 05.04.2018 (Annexure-10), DGACR mentions

"Further audit memo no. 48 dated 22.2.2018 was issued but the organization did not furnish reply to the following points

(i) Action taken by the authority in respect of the recovery of payment in excess of pay and allowances due to irregular grant of NSFSG from the concerned officials.

(ii) Details of officers who had been granted NSFSG during the period 13.8.1999 till date along with the details of amount paid."

Although, EPFO has furnished reply to the said Audit Report vide letter dated 03.07.2018 (.), it is not clear to the Committee whether the said audit para has been settled. However, the very basis of DGACR's objections to the grant of NSFSG, as mentioned in paragraph 5.1.2(1) is that there are still some functional posts existing in EPFO in cadres other than the Commissioners' cadre. This is an important anomaly that was pointed out by DGACR in its report. It, therefore, emerges that if NSFSG is to be considered, it cannot be considered in isolation for the Commissioners' cadre only. However, it is noted that functional posts still exist in EPFO.

9.6 The cadre restructuring in EPFO was carried out in 2016. Ministry of Labour and Employment, vide letter dated 27.12.2016 (Annexure-14), had conveyed its approval to the proposal relating to the Cadre restructuring in EPFO. As per the said order read with EPFO's letter dated 13.01.2017 (Annexure-10), the number of posts in various grades in the Commissioner Cadre, before and after cadre restructuring (CR), is as follows:

<table>
<thead>
<tr>
<th>Name of Posts</th>
<th>Level in the Pay Matrix as per 7th CPC</th>
<th>No. of Posts Before CR</th>
<th>No. of Posts After CR (2016-17)</th>
<th>% age to total posts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Central Provident Fund Commissioner (HQ)</td>
<td>Level 14</td>
<td>4</td>
<td>13*</td>
<td>1.06</td>
</tr>
<tr>
<td>Additional Central Provident Fund Commissioner-I</td>
<td>Level 13 A</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Additional Central Provident Fund Commissioner-II</td>
<td>Level 13</td>
<td>15</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Additional Central Provident Fund Commissioner</td>
<td>Level 13 A</td>
<td>0</td>
<td>32</td>
<td>3.10</td>
</tr>
<tr>
<td>Fund Commissioner</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional PF Commissioner-I</td>
<td>Level 12</td>
<td>59</td>
<td>239</td>
<td>23.14</td>
</tr>
<tr>
<td>Regional PF Commissioner-II</td>
<td>Level 11</td>
<td>226</td>
<td>299</td>
<td>28.94</td>
</tr>
<tr>
<td>Assistant PF Commissioner@</td>
<td>Level 10</td>
<td>545</td>
<td>452</td>
<td>43.76</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>859</strong></td>
<td><strong>1035</strong></td>
<td><strong>100</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Note:** ACC-I and ACC-II posts were merged and new post of Additional CPFC (ACC) was created.
*includes two posts of CVO and FA&CAO
@ filled up by promotion (50%) and DR (50%) by USPC

9.7 From the Table at paragraph 9.6 above, it **appears that** the functional posts of ACC-II (in Level 13) have been abolished due to Audit Objection and for providing the benefit of NFSG to the Officers in the grade of Regional Provident Fund Commissioner-I (RPFC-I). However, the posts earmarked for various grades in the Commissioner cadre are **not as per model guidelines on cadre structure, issued by DoPT.** DoPT, in its guidelines issued vide O.M. dated 31.12.2010, has stated the following regarding relative number of posts in feeder cadre for promotion:

"Care should be taken to see that the base for promotion is strong, i.e., the departmental candidates are fully qualified for the responsibilities of the higher post and the field is also adequate, i.e., **normally the feeder grade should range from 3 to 5 times the number of sanctioned posts** in the higher grade, in case the post in the higher grade is to be filled on Selection basis."

9.8 In view of the guidelines mentioned in the paragraph above, a comparison of the structure of the Commissioner cadre of EPFO vis-à-vis a model structure as per DoPT’s guidelines is given in the table below:

<table>
<thead>
<tr>
<th>Name of Posts</th>
<th>Level in the Pay Matrix as per 7th CPC (Grade Pay as per 6th CPC)</th>
<th>No. of posts as per DoPT guidelines (Considering the total cadre strength to be 1035)</th>
<th>Actual no. of Posts (Deviation from the stipulated figure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Central Commissioner (HQ) PF</td>
<td>Level 14 (Rs 10000)</td>
<td>13</td>
<td>13*</td>
</tr>
<tr>
<td>Additional Central Commissioner PF</td>
<td>Level 13 A (Rs 8900)</td>
<td>25</td>
<td>32 (~28%)</td>
</tr>
<tr>
<td>Regional Commissioner-I PF</td>
<td>Level 12 (Rs 7600)</td>
<td>77</td>
<td>239 (~210%)</td>
</tr>
<tr>
<td>Regional Commissioner-II PF</td>
<td>Level 11 (Rs 6600)</td>
<td>230</td>
<td>299 (30%)</td>
</tr>
<tr>
<td>Assistant Commissioner PF</td>
<td>Level 10 (Rs 5400)</td>
<td>690</td>
<td>452 (~34%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1035</strong></td>
<td><strong>1035</strong></td>
</tr>
</tbody>
</table>

It can be seen from the table above that there is a substantial deviation (approx. 210%) in the number of posts at the level 12 of the pay matrix (RPFC-I), from the model guidelines as specified by DoPT.
9.9 The Committee also noted that after cadre restructuring, relaxation in the qualifying service for promotion has been granted to various grades in the Commissioner Cadre (from APFC to RPFC-II, RPFC-II to RPFC-I and RPFC-I to ACC) ranging from 12-21 months in the year 2019. The details regarding relaxation in qualifying service for promotion to various posts may be seen in the table below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>From</th>
<th>To</th>
<th>No. of posts</th>
<th>Relaxation period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>RPFC-I</td>
<td>ACC</td>
<td>22</td>
<td>12 months</td>
</tr>
<tr>
<td>2</td>
<td>RPFC-II</td>
<td>RPFC-I</td>
<td>8</td>
<td>21 months</td>
</tr>
<tr>
<td>3</td>
<td>APFC</td>
<td>RPFC-II</td>
<td>81</td>
<td>12 months</td>
</tr>
</tbody>
</table>


9.10 It was observed by the Committee that the relaxation given to the EPFO officers was necessitated by the fact that the structure of the Commissioner cadre does not conform with the model cadre structure. Moreover, such relaxations will continue to be required in the future, irrespective of whether NFSG is granted or not, in case the existing cadre structure persists.

9.11 The Committee also observed that, as mentioned by EPFO in its letter no. HRM-I/D-18(1)2014/pt./1096 dated 05.02.2020 (Annexure-24), “no MACP has been granted to the officers who have joined the Organisation as Group ‘A’ Officer although the MACP has been granted to a few of those Group A Officers who had joined the EPFO initially as Group ‘B’ Officer i.e. Enforcement Officer/Accounts Officer.” Thus, it is seen that the scheme of MACP, which, as per DoPT’s O.M. no. 35034/3/2008-Estt.(D) dated 19.05.2009 is not applicable to Organised Group ‘A’ services, is existent in the EPFO commissioner cadre. Therefore, it is understood that there is co-existence of MACP and NFSG in the Commissioners’ cadre, which is anomalous.

9.12 The Committee noted that all the Central Group ‘A’ posts do not come under the ambit of organized services. As mentioned by DoPT and re-iterated on several occasions (paragraph 6.8) there is an established procedure for grant of organised status to a Central Group ‘A’ Service and the same requires approval of the Cabinet as per the cadre review guidelines. Further, there are various attributes of Organised Group ‘A’ Central Services issued by DoP&T on 19/20.11.2009 (Annexure-27). Even after complying with the said attributes no service would be considered as Organised Service unless it has been declared as such through the established procedure.

9.13 The Committee noted that the members of the Organised Group ‘A’ Service are eligible for the benefit of Non-Functional Selection Grade (NFSG) @ 30% of Senior Duty Post (SDP) and Non-Functional Financial Upgradation (NFFU, also called NFU) as per Department of Personnel and Training guidelines, as amended from time to time. It further observed that there is already a demand for grant of Non-Functional Upgradation (NFU) for the Officers of the Commissioner Cadre in EPFO in addition to the benefit of NFSG. In case of the grant of NFU to the EPFO officers (of the Commissioners’ cadre), DoPT, vide ID note dated 20.07.2012 (Annexure-28), had stated:

“The instructions of NFU issued in DoPT OM dated 24.04.09 is applicable to officers of Organised Group ‘A’ services under Central Government. EPFO being an autonomous body, the officers and employees of EPFO shall not be eligible for NFU.”

Besides, there has also been a demand for grant of Senior Time Scale (STS) to Assistant Director (Information Service) in Pay Band-3 (Rs.15600-39100) with Grade Pay of Rs.6600/- on completion of 4 years/5 years regular service, which is a separate cadre in EPFO. In this case, similar to the
decision conveyed regarding grant of NFU to Commissioners’ cadre, DoPT, vide ID No. 1295645/18/CR dated 09.03.2018 (Annexure-29), had opined as follows:

“EPF is an autonomous organization and DoPT rules and policies are not suo-moto applicable to them and that the post/cadre of the EPFO is not Group ‘A’ Organised Service. Therefore, NFU provisions are not applicable to them.”

9.14 The observations of DoP&T (I. D. No.1334951/2018 dated 10.12.2018 (Annexure-16)), reveal that the Commissioner cadre in EPFO is neither recognized as Central Group ‘A’ Service nor as organized Group ‘A’ Service. The crucial word here is ‘organised’. The word ‘organised’ is prefixed before a Group ‘A’ Service which meets certain criteria and after following the due procedure. Once a Service has been recognized as organized Group ‘A’ Service, the members of that Service are eligible for the benefits of NFFU and NFSG.

9.15 The representatives of EPF Officers’ Association during meeting with the Committee have contended that the conditions of service are comparable to the officers of the Indian Revenue Service Cadre and Central Labour Service Cadre. It was mentioned that although they are not organized Group A service, they are Group A Service and the benefit of NFSG is squarely applicable to them.

9.16 The Committee observed that another autonomous body, Employees’ State Insurance Corporation (ESIC), also exists under the same Ministry, i.e. Ministry of Labour and Employment, which is established under the ESI Act, 1948. The provisions for the determination of service conditions of the employees of ESIC, vide section 17(2) of ESI Act, 1948, are similar to those of section 5D(7) of the EPF & MP Act, 1952.

9.17 The Committee observed that ESIC does not have NFSG or any other time-scale promotions. Both the levels in the Pay Matrix viz. Level 13 (Grade Pay Rs.8700) and Level 13A (Grade Pay Rs.8900) are functional grades in ESIC. These two levels were also functional in EPFO prior to the cadre restructuring in 2016.

9.18 It was also brought to the notice of the Committee that all the expenses of the Central Board, EPFO are met from administrative charges on EPF payable by the employer, which is 0.5% of wages of the employees (w.e.f. 1.06.2018). There is no provision from the Consolidated Fund of India towards establishment related expenditure of the Central Board, EPF. However, the Government contributes 1.16% of wages (upto Rs. 15000 per month) of the employees under the Employees’ Pension Scheme, 1995. Similarly, the Government also bears the differential amount of payment of minimum pension of Rs. 1000 per month under EPS w.e.f. 01.09.2014.

9.19 In this regard, it was further brought to the notice of the Committee that in its reply vide letter dated WSU/44(2)97/Admn. Charges/949 dated 06.09.2018 (extract at Annexure-30) in reference to PMO ID No. 4847692/PMO/2018-ES-2 dated 15.06.2018, EPFO has, inter-alia, mentioned “Consequent to the reduction in administrative charges to 0.50% from 1st June, 2018, it has been projected that the estimated Receipt of administrative charges would be around Rs. 3250 crores per annum whereas average expenditure would be around Rs. 4900 crores per annum. Therefore, a shortfall of Rs. 1650 crores approximately every year.” Thus, the grant of NFSG will further stretch the already thin budget of EPFO.
CONCLUSIONS

9.20 The Committee concludes that the scheme of NFSG in the Commissioners’ cadre of EPFO is not consistent with the extant guidelines of the Government, as also pointed out by the DGACR’s audit reports. Moreover, there are different policies for career progression for different cadres within the same organization (i.e. EPFO). Even within the same cadre of the Commissioners, there is apparent disparity between the application of Government orders to direct recruits and to those promoted from Group ‘B’ posts.

9.21 With the above background, the Committee does not recommend extending NFSG to the Commissioners’ cadre because of the following implications:

(i) Issue of grant of NFFU and other benefits associated with Organised Group ‘A’ services. In fact, EPFO has already sent a proposal, vide letter dated 03.01.2020, for grant of non-functional upgradation of Group ‘A’ Officers of EPFO (Commissioners’ cadre) in different grades. (Annexure-31)

(ii) Issue of grant of NFSG and other benefits associated with Organised Group ‘A’ services to officers in other cadres (other than Commissioners’ cadre) of EPFO which will have to be logically extended to them in future.

(iii) Issue of grant of NFSG to officers of ESIC, another autonomous body under the Ministry of Labour and Employment.

(iv) The issues raised by Audit Report in 2015 and re-iterated in 2018, which have yet not been settled.

(v) Financial implications of the grant of NFSG as discussed in paragraph 9.19.

(vi) The fact that the DoPT has on multiple occasions opined that the benefit of NFSG is applicable to the officers of Organised Group ‘A’ service only and the cadre in question is neither recognized as Central Group ‘A’ Service nor an Organised Group ‘A’ Service (refer paragraph 6.8.4.2).

(vii) Implications because of the provision of paragraph 22A of the EPF Scheme, 1952 as in case of grant of NFU, in grades above SAG, to the officers of EPFO will have to be sent to the Central Government for concurrence.

(viii) The benefit of financial upgradation on non-functional basis (NFSG and NFU) are not available to Group ‘A’ officers other than those who are members of Organised Group ‘A’ services. Therefore, it would be incorrect to extend this benefit on the basis of principle of equivalence with the officers and employees of the Central Government drawing corresponding scales of pay in terms of section 5D(7) of the EPF & MP Act, 1952.

9.22 It is also seen that EPFO as an organization has adopted some of the schemes of Organised Group ‘A’ Services (i.e. NFSG) and at the same time, they have adopted some of the schemes which are not applicable to Organised Group ‘A’ services (i.e. MACP). Thus, it is understood that EPFO is not consistent in their policies as far as recruitment, salary and allowances, discipline and other conditions of service of the employees/officers are concerned. Even when the cadre restructuring was done after the audit objections, it was seemingly done mainly to facilitate the way for NFSG. Besides, the audit objections raised by Audit Report for the year 2013-14 and that for the year 2016-17 have not yet been settled.

9.23 The matter of concern for the affected officers, as perceived by the Committee, is stagnation in their career. It was also intimated by the EPFO that approximately 50 officers currently holding the posts of RPFC-I will not get any promotion before superannuation if NFSG is not granted. This will affect their morale due to prolonged stagnation in the cadre in future. The Committee takes full cognizance of this issue.
9.24 However, the Committee is of the view that the grant of NFSG will not address the issue of stagnation due to inherent imbalance in the present cadre structure of the Commissioner's cadre. Relaxation in qualifying service for promotion at various levels in the Commissioner Cadre will continue to be required in future. The Committee recommends that a more viable way to address the issue of stagnation is to review the existing cadre structure to bring it closer to the model cadre structure.

9.25 If it still leads to career stagnation for the officers in the Commissioner's cadre, it may be addressed by granting MACP which the Group 'A' officers of the Commissioner's cadre are eligible for. EPFO is requested to extend the benefits of MACP to all Group 'A' officers of the Commissioners' cadre, which they have granted to officers promoted to Group 'A' (as per EPFO's reply dated 05.02.2020).
ANNEXURE-I

No. A-12018/02/2018-SS-I (Pt)
Ministry of Labour and Employment
Government of India

Shram Shakti Bhawan, Rafi Marg,
New Delhi, dated 01 January, 2020

ORDER

Subject: Constitution of Committee to facilitate decision on the issue of grant of Non-Functional Selection Grade (NFSG) to RPFC-I in EPFO.

Sanction of the Hon'ble MoS(I/C) for Labour and Employment is accorded to constitute a Committee to facilitate decision on the issue of grant of NFSG to RPFC-I in EPFO.

2. The composition of the Committee would be as under:
   (i) Smt. Anuradha Prasad, Addl. Secretary & CVO, L&E - Chairperson
   (ii) Ms Sibani Swain, AS & FA, MoL&E - Member
   (iii) Shri Sunil Barthwal, CPFC, EPFO - Member
   (iv) Shri Rahul Bhagat, Director, MoL&E - Member Secretary

3. The Committee may examine, in detail, all the facts of the case and the opinions received from various Ministries/Departments and give their recommendations on the issue within 15 days of its constitution.

4. Social Security-I section shall provide all assistance to the Committee.

Under Secretary to the Government of India

(S. K. Das)

To:

1. Smt. Anuradha Prasad, AS, MoL&E.
2. Ms Sibani Swain, AS & FA, MoL&E.
3. Shri Sunil Barthwal, CPFC, EPFO, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110 066.
4. Shri Rahul Bhagat, Director, MoL&E.

Copy to:

1. FS to MoS(IC), Labour and Employment.
2. PPS to Secretary (L&E).
3. FS to JS (RKG).
OFFICE MEMORANDUM

Subject: Recommendation of the Fourth Central Pay Commission Orders regarding Selection Grade in Group 'A' Services.

The undersigned is directed to say that pursuant to the recommendation of the Fourth Pay Commission regarding Selection Grade Posts for Group 'A' Central Services, the President is pleased to decide that in all Group 'A' Central Services the number of posts in the Selection Grade shall be equal to 15% of the senior duty posts (i.e. all duty posts at the level of Senior Time Scale and above in the Cadre). However, there shall be no increase in the overall strength of the Cadre. An office appointed to the Junior Administrative Grade will be granted Selection Grade if he satisfies the conditions prescribed in paragraphs 3 and 4 below.

2. It has been noted that, save in a few cases, the formula of 15% of senior duty posts will yield a figure which is less than the number of posts sanctioned in the Junior Administrative Grade. Hence there will be no difficulty in implementing the decision. However, in a few cases the formula yields a figure which is slightly higher than the number of posts sanctioned in the Junior Administrative Grade. It is made clear that in respect of these services the number of posts in the selection Grade will be limited to the number of posts sanctioned in the Junior Administrative Grade.

3. Appointment to the Selection Grade and to posts carrying pay above the Junior Administrative Grade Scale of pay in Group 'A' Central Services shall be made by selection on merit with due regard to seniority.

4. No member of the Service shall be eligible for appointment to the Selection Grade until he has entered the fourteenth year of service on the 1st July of the year calculated from the year following the year of examination on the basis of which the member was recruited.

5. Appointment to the Selection Grade shall be made by a Committee to be constituted internally and the cases relating to appointment shall continue to be sent to the E.O. Division of this Department for obtaining the prior approval of the Appointment's Committee of the Cabinet. This provision shall not apply to such of the Departments as have been specifically empowered to make appointments at this level within their own competence.
Office Memorandum

Subject:- Non-Functional upgradation for Officers of Organised Group ‘A’ Services in PB-3 and PB-4

***

Consequent upon the acceptance of the recommendations of the Sixth Central Pay Commission, the following orders are issued:-

(i) Whenever an Indian Administrative Services Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay band 3 or Pay Band 4, the officers belong to batches of Organised Group A Services that are senior by two years or more and have not so far been promoted to that particular grade would be granted the same grade on non-functional basis from the date of posting of the Indian Administrative Service Officers in that particular grade at the Centre.

(ii) Grant of higher scale would be governed by the terms and conditions given in Annex-I.

(iii) Appropriate amendments in the Service Rules may also be carried out.

(iv) Establishment Division of this Department will issue orders from time to time, in consultation with the Establishment Officer, intimating the
batch of the officers belonging to the Indian Administrative Service who have been posted at the Centre in the various grades of PB-3 and PB-4 as well as the date of posting of the first officers belonging to the batch.

2. Grant of higher scale (i.e. pay band and/or grade—pay) under these instructions would be w.e.f. 1.1.2006, wherever due and admissible.

3. Hindi version will follow.

(SMITA KUMAR)
Director (E-I)
Tel. 2309 2479

To

1. All Ministries/Departments of Government of India
2. The President’s Secretariat, New Delhi.
3. The Vice-President’s Secretariat, New Delhi
4. The Prime Minister’s Office, New Delhi.
5. The Cabinet Secretariat, New Delhi.
7. The Union Public Service Commission, New Delhi.

Copy to :-

1. The Rajya Sabha Secretariat, New Delhi.
2. The Lok Sabha Secretariat, New Delhi.
3. AllAttached Offices under the Ministry of Personnel, Public Grievances and Pensions.
4. Establishment Officer and Secretary, ACC (10 copies).
6. This supersedes instructions contained in this Department’s O.M. No.5/12/79-PP-II, dated the 31st July, 1982. Accordingly the condition regarding stagnation at maximum of Junior Administrative Grade for two years for promotion to Selection Grade contained therein, is hereby removed.

7. The orders regarding fixation of pay on appointment to Selection Grade will be issued separately.

8. These orders will take effect from 1.1.1986.

9. In so far as persons serving in the Indian audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

(Hindi version will follow)

Sd/-
(V.P. UPPAL)
Director (PP)
Phone. 381364
5. All Officers and Sections in the Department of Personnel & Training.

6. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi

7. All Staff Members of National Council (JCM)

8. All Staff Members of the Departmental Council (JCM), Ministry of Personnel, PG and Pensions

9. Establishment (RR Division) (100 copies)

10. NIC, North Block for posting on the website.

(SMITA KUMAR)
Director(E-I)
Tel. 2309 2479
CONFORMATION OF THE DRAT MINUTES OF THE 31ST MEETING

MEETING : EXECUTIVE COMMITTEE, CBT, EPF
DATE : 13.08.1999
VENUE : COMMITTEE ROOM, SHRAM SHAKTI BHAWAN, NEW DELHI

31st meeting of the Executive Committee of the Central Board of Trustees, Employees’ Provident Fund was held under the Chairmanship of Dr. L. Mishra, Chairman, Executive Committee, Central Board of Trustees, Employees Provident Fund and Secretary, Ministry of Labour. Following members attended the meeting:

1. Shri R.K. Saini,
   Joint Secretary
   Government of India,
   Ministry of Labour

2. Smt. Pravin Tripathi,
   Joint Secretary & Financial Advisor
   Government of India,
   Ministry of Labour

3. Shri G.A. Rajkumar

4. Shri N. Kannan

5. Shri A.S. Kasfiwál

6. Shri V.P. Chopra

7. Shri Paraduman Singh

8. Shri A. Venkataram

9. Shri G. Sanjeeva Reddy

10. Shri S.K. Ray
    Central Provident Fund Commissioner

Shri O.P. Goyal, Director, LISD, National Informatic Centre also attended the meeting.

List of Officers of the Ministry of Labour and Employees’ Provident Fund Organisation, who were in attendance, is at Annexure-I.

In his opening remarks Chairman, Executive Committee, CBT, EPF condoled the sad and sudden demise of Shri R.S. Kaushik, Central Provident Fund Commissioner as under.
2.11 Status of Computerisation of Employees' Provident Fund Organisation.

(i) to (ix)

- The status of Action taken noted by the Executive Committee.

(x)

Shri Kasliwal suggested that in future such proposals might be put up as a separate agenda item.

Chairman, Executive Committee suggested that a system should be developed at the Head Office level for centralised monitoring of the working of computer/EDP cells of all the ROs/SROs/SAOs.

The proposal as contained in the Action Taken Statement for approval of purchase of 10 line matrix printers for Rs. 25.82 lakhs was approved.

(ix) to (xiv)

The status of Action taken was noted by the Executive Committee.

Item No. 3: Recommendations of the Sub Committee CBT, EPF constituted for examining representations of employees of EPFO regarding Grievances/Anomalies in the implementation of Vth Central Pay Commission scales.

The item was taken up for discussion and in course of discussion the following observations were made:

Shri Parduman Singh:

- The recommendation of the Sub-Committee should have been discussed with the staff federation
- Employees' Provident Fund Organisation Staff Federation was not satisfied with the recommendations of the Sub-Committee

Shri G S Reddy

- Extra payment of 10% HRA may be continued

Shri A S Kasliwal

- Central Provident Fund Commissioner may discuss the issue of payment of 10% HRA in the ensuing meeting with the staff federation on 16.8.1999
Central Provident Fund Commissioner clarified that 3 to 4 rounds of discussions were held with the Federation. The Federation desired implementation of the best of pay packages available to staff of Audit and Accounts department without fulfilling certain other vital service conditions.

Executive Committee after detailed discussion decided the following:

(i) The recommendations of the Sub-Committee as given in its report, except on the subject of House Rent Allowance be accepted for the implementation.  
(ii) On the subject of House Rent Allowance, Central Provident Fund Commissioner may hold discussion with the All India EPF Staff Federation and resubmit the proposal for consideration of the Executive Committee.

Item No. 4: Amendment to Recruitment Rules for the post of Hindi Translator (Gr-I) and redesignation of the post as Senior Hindi Translator.

The proposal as contained in the Memorandum was approved.

Item No. 5: Proposal for upgradation of the posts of Officer-in-charge of SROs (now headed by APFCs) to the grade of Regional Provident Fund Commissioner (Grade-II).

Shri Kannan pointed out that criteria of 1.25 lakh subscribers which was laid down in the year 1989 may be revised upwardly, considering the fact that working of the organisation has been computerised to a large extent.

Chairman, Executive Committee decided that norms of 1.25 lakh subscribers should be reviewed separately taking into account the increased workload of enforcement and pension.

Finally, the proposal as contained in the Memorandum was approved.

Item No. 6: Upgradation of the posts of Vigilance Officer in Head Office and Zonal Offices.

Shri Parduman Singh desired that a report on the working of vigilance section in Employees' Provident Fund Organisation might be placed before the Executive Committee.

Shri Kannan stated that the need for manning the vigilance wing by persons of good character and calibre was imperative.

The Financial Advisor, Ministry of Labour pointed out that such a proposal in future may make mention of the difficulties faced by the organisation in getting the suitable persons.

The proposal as contained in the Memorandum was approved with the following decision:

A paper on working of vigilance section may be put up in the next Executive Committee meeting covering among others the following:

- Number of complaints handled
31st Executive Committee Meeting

Item No 3: Recommendations of the Sub Committee CBT, EPF constituted for examining representations of employees of EPFO regarding Grievances/Anomalies in the implementation of V Central Pay Commission scales.

The Executive Committee of the CBT, EPF in its 24th Meeting held on 22.10.1997 took the decision for implementation of revised pay scales of V Central Pay Commission as given in Part 'A' of the first schedule to the Central Civil Services (Revised Pay) Rules, 1997 notified vide Gazette notification GSR 566(E) dated 30th September 1997. It was also decided to constitute a Sub Committee to consider the grievances/anomalies/representations, if any, as a result of the implementation of the revised pay scales.

With the approval of the Chairman, Executive Committee CBT, EPF, the Sub Committee consisting of the following was constituted on 23.06.1998:

Shri Hasmukh Bhai Dave, Employees' Representative, CBT, EPF
Shri N. Kannan, Employers' Representative, CBT, EPF
Shri S.K. Ray, FA & CAO
Shri C. Bheemanna, Addl C.P.F.C. (P&T) Convenor

The Terms of Reference of the Committee were as follows:

- To examine and consider the representations/anomalies/grievances received from the Officers' Association and staff unions/Federations of employees of Employees' Provident Fund Organisation on the implementation of the 5th Central Pay Commission.

- To examine and consider certain issues referred by Ministry of Labour and Employees' Provident Fund Organisation to be put up before the Sub-Committee.

- To make recommendations on each of the foregoing having regard among other relevant factors to the provisions of Sec 5D of Employees' Provident Fund & Miscellaneous Provisions Act, 1952

The Committee was also advised to provide adequate opportunity to the recognised unions/staff federations/service associations of the staff and officers of the Employees' Provident Fund Organisation to present their views before the Sub Committee.

The Committee was required to submit its report in December of 1998. However, the Executive Committee, CBT, EPF, in its 29th meeting held on 4.12.98 extended the term of the Committee and advised to submit its report by 28th February 1999.

The Sub Committee has submitted its report on 23rd February 1999 and a copy of the report was given to the Members of the Executive Committee in the 30th Meeting held on 05.03.1999.
The recommendations of the Sub Committee have been examined in Head Office EPFO in consultation with the Finance Wing. The comments/proposals of Head Office EPFO on each of the recommendations are given in the Annexure.

The Sub-Committee has also recommended that cadre review may be carried out by constituting Cadre Review Committees for Group ‘A’ ‘B’ & ‘C’ posts. It is proposed that for a comprehensive study, a single Cadre Review Committee be constituted for all the three categories, which may be recommended/nominated by the Executive Committee.

Submitted for the consideration of the Executive Committee.
<table>
<thead>
<tr>
<th>OBSERVATIONS/ RECOMMENDATIONS OF THE SUB-COMMITTEE</th>
<th>COMMENTS / PROPOSALS OF HEAD OFFICE OF EPFO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GROUP ‘A’ OFFICERS</strong></td>
<td>The Sub-Committee has not accepted for automatic upgradation of the following posts to one grade higher as demanded by the EPF Officers’ Association and to provide replacement scales of 5th Central Pay Commission:-</td>
</tr>
<tr>
<td>The cadre of Group ‘A’ officers of EPFO at present is as follows:</td>
<td>- Assistant Provident Fund Commissioner</td>
</tr>
<tr>
<td>Central Provident Fund Commissioner - 1</td>
<td>- Regional Provident Fund Commissioner (Grade-I)</td>
</tr>
<tr>
<td>(18,400 - 500 - 22,400)</td>
<td>- Addl. C.P.F.C.</td>
</tr>
<tr>
<td>Addl. C.P.F.C. - 8</td>
<td>The Sub-Committee also not agreed for upgradation of the post of Central Provident Fund Commissioner to the level of Secretary, Government of India.</td>
</tr>
<tr>
<td>(14,300 - 400 - 18,300)</td>
<td>The Sub-Committee has observed that the Commissioners’ cadre (i.e. all the posts of APFC including the Central Provident Fund Commissioner) meets the attributes prescribed for an organised Group ‘A’ service of Central Government.</td>
</tr>
<tr>
<td>RPFC (Gr. I) - 27</td>
<td>The observations of the Sub-Committee are based on the instructions of the Department of Personnel &amp; Training which may be accepted.</td>
</tr>
<tr>
<td>(12,000 - 375 - 16,500)</td>
<td></td>
</tr>
<tr>
<td>RPFC (Gr. II) - 91</td>
<td></td>
</tr>
<tr>
<td>(10,000 - 325 - 15,200)</td>
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<tr>
<td>APFC - 428</td>
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<tr>
<td>(8,000 - 275 - 13,500)</td>
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1) Representatives of Employees Provident Fund Officers Association in the written memoranda and oral submissions made before the Sub-Committee have demanded that keeping in view the provisions of section 5D (7) of EPF & MP Act, 1952 the cadre of Group ‘A’ Officers in the Employees’ Provident Fund Organisation may be rearranged / re-structured and upgraded to one grade higher in each grade in the pre-revised pay scales and they may be given revised pay scales as per 5th Central Pay Commission Recommendations. Detailed discussion took place regarding the interpretation of the Section 5D (7) and operation of the sub clause a & b. The Sub Committee is of the view that Sub Clause (a) of Section 5D (7) requires to be operatedimplemented in full and Sub Clause (b) only provides guidance in determining the proper pay scales in implementing the provisions of Clause (a) of Section 5D (7).

After detailed examination of the relevant portions of the Fifth Central Pay Commission Report regarding Group ‘A’ services and representations submitted by the EPF Officers Association, the Sub Committee is of the considered opinion that the Group ‘A’ Officers (Commissioners’ Cadre) meets the attributes prescribed for recognising the cadre as a Group ‘A’ service. The attributes prescribed by the Department of Personnel & Training are as follows: (48.7 of the Fifth Central Pay Commission Report) |

a) The highest cadre post is not below the level of Rs 5900-6700. |

b) It has all the standard grades, namely, Rs 500-4000, Rs 3000-4500, Rs 5700-5000/Rs 4500-5700. |
and Rs. 5900-6700;
c) At least 50% of the vacancies in the Junior Time Scale (Rs. 22000-40000) are required to be filled by direct recruitment; and
d) All vacancies above the Junior Time Scale and up to the Senior Administrative Grade (Rs. 5900-6700) are filled by promotion from the next lower grade.

At present, the Commissioners' Cadre (Group 'A' Officers) of EPFO have not been provided the benefit of Non-functional Selection Grade available to Group 'A' services in the Central Government. As per the instructions of the Department of Personnel & Training, the selection grade posts for Group 'A' services need to be constituted to the extent of 15% of senior duty posts (i.e., all duty posts at the senior time scale and above in the cadre). At present, in the EPFO this benefit has not been provided to the cadre of Commissioners.

The Sub Committee recommends that consistent with the instructions of the Department of Personnel & Training, 15% of senior duty posts (i.e., RPFC Grade-II and above) be constituted into Selection Grade posts (pay scale Rs. 14300-400-18300) and the appointment to these posts be done by promotion as per the procedure prescribed by the Department of Personnel & Training.

The Sub Committee observed that in Employees' Provident Fund Organisation the pay scale of Rs. 14300-400-18300 which is the pay scale of Non-functional selection grade, (to be made available to Officers of Junior Administrative Grade of the Group 'A' services, on promotion, without any change in functions), this scale (i.e., Non-functional Selection Grade) has been provided to be Functional Posts, i.e., Addl. CPFC's & FA & CAO. As the incumbents in the posts are to supervise the work of Officers in the grade of Junior Administrative Grade as well as Officers in the Non-functional Selection Grade, the anomaly need to be rectified by placing the posts of Addl. CPFC & FA & CAO in the appropriate pay scales.

As per the instructions of Department of Personnel & Training in Group 'A' Central Services, selection grade posts are to be created equal to 15% of the senior duty posts (all duty posts at the level senior time scale i.e., Rs. 10000-15200 and above). In the cadre of Commissioners in Employees' Provident Fund Organisation the number of senior duty posts sanctioned in the pay scale of Rs. 10000-15200 and above are numbering 127. If the benefit of selection grade is to be given to the Commissioners' cadre, 19 selection grade posts have to be made available (15% of 127).

Acceptance of the recommendations of the Sub Committee regarding creation of selection grade posts entails providing of non-functional selection grade pay scale (Rs. 14300-400-18300) to 19 regular RPFC-Grade-I. There is no creation of additional posts. Granting of non-functional selection grades is personal to the officers who fulfill the criteria prescribed by Department of Personnel & Training. This has been implemented in all Group 'A' services of the Government of India. The recommendations of the Sub-Committee may be accepted in principle and this may be referred to the Cadre Review Committee for determining the number of posts to be earmarked for non-functional selection grade.

In order to remove anomaly pointed out by the Sub-Committee and for maintenance of an effective/functional hierarchy, the incumbents in the post of Addl. CPFC's and FA & CAO, who are to supervise the officers in the rank of Regional Provident Fund Commissioner Gr. I, are to be given the functional pay scales. At present ten posts of Addl. CPFC's and equivalent have been sanctioned to EPFO including FA & CAO and Director - NATRSS.

The recommendations of the Sub Committee may be accepted in principle.
scales recommended by the Fifth Central Pay Commission and implemented by the Central Government.

After careful consideration and keeping in view of the pay scale of Chief Executive of the Organisation i.e. Pay Scale of the Central Provident Fund Commissioner (Rs.18400-500-22400), the Sub Committee recommends that the posts of Addl. C.P.F.C.s. and FA & CAO be placed in the pay scale of Rs.16400-450-20000 which is the pay scale provided to the Functional posts in the Group ‘A’ services. The Central Police Organisations, Indian Police Service, Indian Forest Service have overcome the similar anomaly by adopting the above pay scale for Functional posts below the Senior Administrative Grade Posts.

In view of the above, the Sub Committee recommends cadre structure/revised scales for the EPFO Officers (Commissioners’ Cadre) and for the post of FA & CAO as under:

1. C.P.F.C. - Rs.18400-500-22400
2. FA & CAO - Rs.16400-450-20000
3. Addl C.P.F.C. - Rs.16400-450-20000
4. Non-Functional Selection Grade for RPFC’s - Rs.14300-400-18300
5. R.P.F.C. Grade-I (JAG Scale) - Rs.12000-375-16500
6. R.P.F.C. Grade-II - Rs.10000-325-15200
7. A.P.F.C. - Rs.8000-275-13500

4) Certain other issues were raised by EPF Officers’ Association like upgradation of posts etc. The Sub Committee is of the opinion that these issues should be addressed by undertaking a proper cadre review which has been prescribed by the DOP&T for Group ‘A’ posts/services. The Fifth Central Pay Commission in their report have also made it mandatory for conducting the periodical cadre review of Group ‘A’ services. Accordingly, the Sub Committee recommends that the cadre review which is overdue in respect of Commissioners’ Cadre of Employees’ Provident Fund Organisation be undertaken immediately.

Cadre restructuring including the creation of the functional grade to remove the anomaly brought out by the Sub-Committee can be examined/rectified by the Cadre Review Committee.

The recommendations of the Sub Committee for undertaking cadre review according to the instructions of Department of Personnel & Training may be agreed to.
5) Employees’ Provident Fund Organisation is also having certain ex-cadre posts like Controller of Pension, Director(MIS), Director(Publicity) etc. which have been constituted from time to time due to various reasons. It is observed that these posts are mainly manned by cadre officers. The Sub Committee considers that keeping in view the instructions of Department of Personnel and Training regarding the cadre management of Group A Services, there is an immediate requirement of examining the continuance of ex-cadre Group A posts in the Employees’ Provident Fund Organisation keeping in view the following factors:

- The nature of functions and responsibilities attached to each of them
- Likelihood of their continuance and
- The desirability of deploying the officers of Commissioners’ Cadre in such posts.

The posts which do not require any special education/technical qualification should be encadred and should form part of the cadre of Commissioners.

**GROUP ‘B’ OFFICERS**

6) At present, the Employees’ Provident Fund Organisation has only one cadre of Group B Officers i.e. Hindi Officers which are in the pay scale of Rs.6500-200-10500. The Executive Committee, CBT, EPF, in its 29th Meeting held on 4th December 1998 deliberated on an agenda item relating to the creation of promotional avenues and redesignation of the post of Hindi Officers. The Executive Committee, CBT, EPF, in the above mentioned meeting has already recommended for creation of a post of Deputy Director (Official Language) also redesignation of the post of Hindi Officer to Assistant Director (Official Language) which meets the requirements of Section 3D (7) of EPF and MP Act, 1952.

Keeping in view the decisions already taken by the Executive Committee, CBT, EPF, the Sub Committee considers that there is no justification for upgradation of the post of Hindi Officer which is in Group B to Group A (Junior Time Scale) posts at this juncture.

**CADRE STRUCTURE AND OTHER ISSUES RELATING TO THE STAFF**

7) The Employees’ Provident Fund Organisation has following cadre structure of Ministerial staff in Head Office/ Zonal/Regional/Sub Regional/Sub Accounts Offices including the Training Institutes.

Based on the recommendations of the Sub Committee, proposals for encadrement of ex-cadre posts of Controller of Pension, Director (MIS), Director (Publicity) have been submitted for consideration of the Executive Committee. Justification of encadrement of remaining posts will also be examined and submitted to the Executive Committee in due course.

In the Central Govt. in all departments, organisations the posts of Assistant Director/Hindi Officer are in the pay scale of Rs. 6500 - 200 - 10500. The observations/recommendations of the Sub Committee may be accepted.

The Sub Committee has not agreed to the upgradation of 80% of posts in each layer as suggested by the All India EPF Staff Federation in their memorandum dated 09.12.1998 (Annexure VI of the report) submitted to the Sub Committee. The Sub
Superintendent / EO / AAO
(Rs.5500-175-9000)
(posts: 1715)

Assistant / Section Supervisor
(Rs.4500-125-7000)
(posts: 1718)

Upper Division Clerk
(Rs.4000-100-6000)
(posts: 8613)

Lower Division Clerk
(Rs.3050-75-4590)
(posts: 3542)

Employees’ Provident Fund Organisation has also implemented a Special Promotional scheme called UDC Time Bound Promotion Scheme wherein a clerk who has completed 17 years of service is placed in the pay scale of Section Supervisor. Employees’ Provident Fund Organisation has also implemented special pay Scheme for 10% UDC who are discharging special functions.

Direct recruitment to the ministerial staff is made at two stages i.e. at the level of LDC (to the extent of 90%) and at the level of Superintendent / Enforcement Officer/Assistant Accounts Officer (to the extent of 25%). As per the existing scheme of promotion there are two channels open right from the LDC, one is through seniority and the other is through departmental examination. 50% of the post of Assistant Provident Fund Commissioner (Group A post) are filled up by departmental promotion.

All India EPF Staff Federation in their written memoranda as well as oral representations made before the Sub Committee have strongly pleaded that keeping in view the provisions of the Section 5D(7) and the duties which are being entrusted to the staff of Employees’ Provident Fund Organisation particularly in accounts and pension branches, they should be extended the benefits of Pay Scales and Cadre structure available to Indian Audit and Accounts Department. They, however, put the condition that the method of recruitment/promotion educational qualification, etc., which are now available to the staff of Employees’ Provident Fund Organisation which they perceive as advantageous to the staff should not be altered. During discussions with the Sub Committee, the representatives of the All India EPF Staff Federation also submitted that the functions of the Employees’ Provident Fund Organisation relating to enforcement is comparable with the staff of the Income Tax
Department. The Federation drawing in analogy with the structure obtained in Accounts and Audit Department has demanded that at every stage of the pyramid, 80% of existing posts in each layer should be placed in the higher pay scale. For example, out of the existing posts of LDC in the pay scale of Rs.3050-73-4500, 80% of them should be placed in the pay scale of UDC Rs.4000-100-6000 and 20% in the Pay Scale of Rs.3050-73-4500. They have also pleaded that for the posts of UDC. Section Supervisor/Assistant, Superintendent/Enforcement Officer/Assistant Accounts Officers, the existing pay scales be upgraded in the pre-revised scale and revised replacement scale may be given. They have also demanded that after placement of these posts in the revised pay scales 80% of these posts should be placed in the next higher pay scale. After thorough examination of the written memoranda and oral submissions made before the Sub Committee, it is observed that there is no consistency and cohesiveness in the demands made by the All India EPF Staff Federation. The demands are also not in consonance with the provisions of the Section 5D(7) of the Act nor they are comparable with any existing Cadre structures of Central Government Departments.

After detailed examination of the issues involved, the demands of the All India EPF Staff Federation the Sub Committee is of the considered opinion that it would not be possible to adopt the pay scales and cadre structures of the Indian Audit and Accounts Department or Income Tax Department for the staff of the Employees' Provident Fund Organisation in patches and in certain grades only because it would not be consistent with the Provision of Section 5D(7) of the Act.

**PROMOTIONAL AVENUES FOR SUPERINTENDENT / ENFORCEMENT OFFICERS / ASSISTANT ACCOUNTS OFFICERS (PAY SCALE Rs.5500-175-9000)**

8) At present as per the existing Recruitment Rules 25% of this cadre are filled up by Direct Recruitment, 25% by Departmental Examination and 50% by Departmental Promotion. The Direct Recruitment is made through UPSC. Keeping in view the aspirations of the Direct Recruitment candidates/Candidates qualified through departmental examination, need for maintaining higher motivational level in these Grades, and functional requirements of the Organisation, especially positioning of certain experienced Group B officers in sensitive and more responsible positions, the Sub Committee recommends that Group B Grade/Intermediate posts in the pay scale of Rs.6500-10500 be created by upgradation of the existing Superintendent/Enforcement Officers/Assistant Accounts Officers posts.
It is observed that only in Employees Provident Fund Organisation an anomalous situation is obtained, where promotion to the Group A posts (Junior Time Scale) Pay Scale of Rs.8000-275-13500, the feeder cadre is in the pay scale of Rs.5500-175-9000. For all Group A services in Central Government, the feeder grades for promotion are in the pay scale of Rs.6500-200-10500.

In view of the above, Sub Committee recommends that to the extent of 15% of total strength of posts in the grade of Superintendents / Enforcement Officers / Assistant Accounts Officers depending on the functional requirement of each office i.e. Head/Zonal/Regional Offices they may be upgraded to Group B i.e. Rs.6500-200-10500 (equivalent to Group B Gazetted post in the Central Government Departments) by

- providing matching savings in consultation with the FA & CAO
- After assessment of the exact number of sanctioned post in the Superintendent/ Enforcement Officers/Assistant Accounts Officers as on date and
- By properly apportioning the upgraded posts to different offices keeping in view the Special requirement of each office.

The Sub Committee recommends that upgraded post be called Selection Grade Post and it will be constituted as Feeder Grade for the promotion to the post of APFC by suitably amending the recruitment rules of the post of APFC.

The Sub Committee also recommends that keeping in view the provisions of Employees Provident Fund (Staff and conditions of service) Regulations, 1962, the selection Grade posts which are equivalent to Group B Gazetted posts of Central Government, be made All India seniority/transferrable post and inter-changeable among the three sub-cadres i.e. Superintendents/ Enforcement Officers/Assistant Accounts Officers. The incumbents in the Selection grade be turned over as per the transfer policy after three to four years to provide them wider exposure and institutional training so as to enable them to gain experience and confidence for handling the duties of higher posts of APFC which they would eventually occupy.

**CADRE REVIEW OF GROUP B & C CATEGORIES**

The Department of Personnel and Training has issued instructions regarding the cadre review for Group B and C categories also. The Sub Committee recommendation of the Sub Committee for cadre review of Group B and C categories of staff may be accepted in
recommends that plethora of issues raised regarding cadre restructuring of Employees’ Provident Fund Organisation Ministerial Staff be entrusted to a properly constituted Cadre Review Committee for a detailed examination and for evolving a coherent, integrated and viable cadre of ministerial staff/enforcement staff keeping in view of the objectives of the Organisation and provisions of Section 5D(7) of the Act.

The issues raised by Employees’ Provident Fund Staff Union of Tamil Nadu and Pondicherry Region, Chennai in their written memoranda and oral submission, and the issues raised by Employees’ Provident Fund Staff Association, Kerala in their written memoranda also largely pertain to the cadre review and these can be examined by the Cadre Review Committee.

The recommendations of the Sub Committee may be accepted.

**HOUSE RENT ALLOWANCE**

10) All India EPF Staff Federation in their memoranda have submitted for restoration of higher rates of HRA which was being paid before 1986. This demand is no more valid in view of the enactment of Section 5D(7) of the Act. Secondly, since 1986 there has been substantial increase in the construction and availability of staff quarters for the staff of Employees’ Provident Fund Organisation. After implementation of the recommendations of the 5th Central Pay Commission regarding HRA, there has been substantial increase in the rates of HRA. Keeping in view the above, there is no justification for additional payment of HRA to the staff of Employees’ Provident Fund Organisation over and above the rates prescribed for the corresponding grades of Central Government employees.
GRIEVANCES REDRESSAL MACHINERY

11) There is an immediate need for constituting Joint Consultative Machinery for resolution of grievances and for maintaining harmonious relations in the Organisation. The Department of Personnel and Training have issued detailed instructions for setting up such a machinery. The Sub Committee recommends that Employees’ Provident Fund Organisation may also take necessary action to set up Joint Consultative Machinery one at national level called Departmental Council and other at the Regional level called Regional Council. As a pre-requisite for effective functioning of the Joint Consultative Machinery at the Regional as well as departmental level, it is necessary to have recognised associations of eligible employees who can participate in the Joint Consultative Machinery. The Sub Committee recommends that Employees’ Provident Fund Organisation should adopt Central Civil Services Recognition of Service Association Rules 1993, for recognition of the staff associations of the Employees’ Provident Fund Organisation and for operationalisation of the Joint Consultative Machinery at the earliest.

At present the Staff Associations are being recognised under the instructions approved by the CBT in its 60th meeting held on 07.11.1973. The instructions were framed with the approval of CBT as Central Govt. had not yet formulated any instructions on the subject. Department of Personnel & Training have now issued instructions vide their O.M. No 2/10/80-JCA dated 9th November 1993 fresh rules for recognition of service associations namely CCS (Recognition of Service Associations) Rules, 1993. Considering the long pending demand of the employees of EPFO for constituting JCM and for providing recognition to the Service Associations and for providing representations in the JCM, it is proposed that the following recommendations i.e. for implementation of instructions issued by the DOP&T may be accepted:

i) for adopting Central Civil Services Recognition of Service Association Rules, 1993 for recognition of the staff associations of the Employees’ Provident Fund Organisation.

ii) constituting the JCM at Regional Level and at National Level (similar to Departmental Council in the Central Ministries) as per the instructions issued by the Department of Personnel & Training.


12) The Sub Committee has examined the detailed list of the posts and recommendations of Fifth Central Pay Commission recommendations in respect of certain posts listed in part B of First Schedule of Gazette notification.

Programmer
(Rs 7450-225-11500 under Part-A)
(Rs 7500-250-12000 under Part-B)

Supervisor (Computer)
(Rs 5000-150-8000 under Part-A)
(Rs 5500-175-9000 under Part-B)

Librarian
(Rs 5000-150-8000 under Part-A)

The recommendations of the Sub Committee for providing pay scales as given under Part B of the gazette notification to following categories of staff of EPFO which are common to the other Central Government departments be agreed to for implementation as per the instructions of the Government:

(i) Programmer
(Rs 7500-250-12000 under Part-B)

(ii) Supervisor (Computer)
(Rs 5500-175-9000 under Part-B)

(iii) Librarian
(Rs. 5500-175-9000 under Part-B)
Assistant / Section Supervisor
(Rs. 4500-125-7000 under Part-A)
(Rs. 5000-150-8000 under Part-B)

Upper Division Clerk
(with special pay of Rs. 70/- p.m.)
(Time Bound Promotion Scheme)
(Rs. 4000-100-6000 under Part-A)
(Rs. 5000-150-8000 without special pay under Part-B)

Data Entry Operator (Grade - A)
(Rs. 3050-75-3950-80-4590 under Part-A)
(Rs. 4000-100-6000 under Part-B)

Data Entry Operator (Grade - C)
(Rs. 4500-125-7000 under Part-A)
(Rs. 5000-150-8000 under Part-B)

Bearer / Tea-Coffee Maker / Washer Boy
(Rs. 2550-55-3200 under Part-A)
(Rs. 2610-60-3150-65-3540 under Part-B)

Cook / Assistant Halwai
(Rs. 2750-70-3800-75-4400 under Part-A)
(Rs. 3050-75-3950-80-4590 under Part-B)

Junior Clerk
(Coupon Kitchen, Sales Office account)
(Rs. 2750-70-3800-75-4400 under Part-A)
(Rs. 3050-75-3950-80-4590 under Part-B)

(iv) Assistant / Section Supervisor
(Rs. 5000-150-8000 under Part-B)
(v) UDC with special pay/UDC under

Time Bound Promotion Scheme
(Rs. 5000-150-8000 without special pay under Part-B)

(vi) Data Entry Operator Grade 'A'
(Rs. 4000-100-6000 under Part-B)
(vii) Data Entry Operator Grade 'C'
(Rs. 5000-150-8000 under Part-B)
(viii) Bearer Tea-Coffee Maker / Washer Boy
(Rs. 2610-60-3150-65-3540 under Part-B)
(ix) Cook / Assistant Halwai
(Rs. 3050-75-3950-80-4590 under Part-B)
(x) Cook cum Guest House Attendant
(Rs. 3050-75-3950-80-4590 under Part-B)
(xi) Junior Clerk
(Coupon/Kitchen/Sales Office/Accounts)
(Rs. 3050-75-3950-80-4590 under Part-B)

It is observed that in Employees' Provident Fund Organisation there are twenty seven posts called Cook-cum-Guest House Attendant which are in the pay scale of Rs. 2550-55-2600-60-3200. Considering the fact that the cooks of the Staff Canteen are given higher pay scale, i.e. the pay scale of Rs. 3050-75-3950-80-4590, the pay scale of Cook-cum-Guest House Attendant who are managing the kitchen in the Guest House and also looking after the upkeep of the Guest House needs to be brought on equal footing with the pay scale of Cooks of Staff Canteen if not in higher pay scale. The Sub Committee accordingly, recommends that Cook-Cum-Guest House Attendant of Employees' Provident Fund Organisation be placed in the revised pay scale of Rs. 3050-75-3950-80-4590.
No.A-11013/1/2004-SS.I
Government of India/Bharat Sarkar
Ministry of Labour & Employment

New Delhi, dated the 30th January, 2006.

To

The Central Provident Fund Commissioner,
EPF Organisation;
Bhevishya Nidhi Bhawan,
New Delhi.

Subject: Grant of Non-functional Selection Grade (NFSG) in the Commissioners cadre of the EPFO - regarding.

Sir,

I am directed to refer to your office letter No.HRD/A(4)(4)2001/1443 dated 23rd November, 2005 on the above subject and to convey that the scheme of grant of Non-functional Selection Grade (NFSG) shall be operated in the Commissioner's cadre of the EPFO. Further, it has been decided with the approval of Hon'ble LEM/Chairman, CBT (EPF) that 29 posts of RPFC Gr.I in EPFO shall be operated in the Non-functional Selection Grade of Rs.14,300-18,300 with immediate effect. It is requested that necessary action in this regard may be taken immediately under intimation to this Ministry.

Yours faithfully,

(Shri K.C. Jain)
DIRECTOR
APPLICATION NO.400-HR of 2010
Chandigarh, this the 25th day of February, 2011

CORAM: HON'BLE MR. JUSTICE S.D. ANAND, MEMBER(I)
HON'BLE MR. KHUSHI RAM, MEMBER (A)

A.K. Chandok son of Jai Gopal Chandok, resident of Flat No. 185, Kendriya Vihar-II, Sector 25, Panchkula.

APPLICANT

BY ADVOCATE: SHRI R.K. SHARMA

VERSUS

1. Union of India through the Secretary, Ministry of Labour, Government of India, Shram Shakti Bhawan, Rani Marg, New Delhi.

2. Central Provident Fund Commissioner, Bhavishya Nidhi Bhawan, 14, Bhikaraj Cama Place, New Delhi 66.

3. Central Board of Trustee, through its Chairman.

RESPONDENTS

BY ADVOCATE: SHRI DEEPAK AGNIHOTRI

ORDER

HON'BLE MR. JUSTICE S.D. ANAND, MEMBER(I):

Facts, apparent from a conjunctive perusal of the pleadings of the parties and conceded as well in the course of the presentation, are as under:

2. The recommendations made by the Fifth Central Pay Commission (hereinafter referred to as the 5th CPC!) were accepted by the Central Government, in respect of the relevant categories of employees, and made applicable with effect from 1.1.1996. Those recommendations included the non-functional selection grade as well which was made available to all Group I All officers of different allied cadres.
3. The respondent, Employee Provident Fund Organization (EPFO), for short), also implemented the recommendations made by the 5th C.P.C. in totality, with the exception that the matter pertaining to the grant of non-functional selection grade came to be decided by the Board of Trustees of the Organization at its meeting held on 13.8.1999. The decision taken by the Board of Trustees was that the non-functional selection grade shall be made available to the relevant category of employees w.e.f. 13.8.1999. The decision taken by the Board of Trustees was referred to the Government of India, in the Ministry of Labour & Employment, which agreed to the grant of non-functional selection grade in principle, but did not agree with the implementation thereof with effect from 13.8.1999. It ordered that it shall be implemented with immediate effect.

4. The pure and simple plea, raised on behalf of the applicant, is that the Board of Trustees being the final authority in the matter of determination of the service conditions of the relevant categories of employees of the EPFO, the forwarding of the matter to the Government of India was a mere surplusage and, in that view of things, the determination of the date with effect from which that decision was ordered to be implemented (i.e. with immediate effect) by the Government of India is also mere surplusage. Reliance, in support of the above averment was placed upon Section 5D(7) of The Employee Provident Funds and Miscellaneous Provisions Act, 1952 which is extracted hereunder:

5D(7)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Govt.

(b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Govt. and in case of any doubt, the Central Board shall refer the matter to the Central Govt. whose decisions therein shall be final.

5. The learned counsel, appearing on behalf of the respondents, was not in a position to dispute the correctness of the averment that it is the Central Board of Trustees which is the competent authority to take a decision in the relevant behalf. However, it was argued that since there was a departure from the rules, the matter did call for approval by the Central Government.

6. We have not been able to persuade ourselves to agree with the learned counsel for respondents. The reasons therefore are as under.

7. A perusal of the above quoted provision of Section 5D(7) of The Employee Provident Funds and Miscellaneous Provisions Act, 1952 leaves no manner of doubt that it is the Board of Trustees which is the final authority qua the determination of the service conditions of the Provident Fund Commissioner (be it the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner or any other officers and employees of the Central Board). The Central Government would necessarily come in if where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid. The above-quoted provision also provides that the conditions of service of the above-indicated categories of officers and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scales of pay. Thus, it is only when a departure from the
rules aforementioned is envisaged that the Board would be obliged to obtain the prior approval of the Central Government.

8. In the facts and circumstances of this case, an instance of departure from the rules could be envisioned only when the Central Board of Trustees recommends a higher grade of pay or special pay etc. to a category of employees whose counterparts in the Central Government are not enjoying the same. In this case, it is common ground that a non-functional selection grade had been allowed to Group II All officers of the Government of India. It is further apparent, from the pleadings raised by the parties, that the Central Board of Trustees agreed to the implementation of the 5th CPC recommendations to the employees of the respondent Organization in toto. The only exception was the non-functional selection grade, the grant thereof was not decided upon by the Central Board of Trustees at a point of time when the decision was taken to implement the recommendations made by the 5th CPC. In common parlance, a decision had to be taken by the Central Board of Trustees about the grant or otherwise of the non-functional selection grade to the categories of employees of the respondent organization, corresponding to their counterparts in the Central Government. If the Board were to agree to implement the non-functional selection grade, it was not at all obliged to make a reference to the Central Government or to obtain prior approval therefor. At the same time, the prior approval of the Central Government was compulsive in case the Central Board of Trustees were to refrain from implementing the recommendations of the 5th C.P.C. qua the grant of non-functional selection grade to the relevant categories of employees.

9. In view of the fact that the Central Board of Trustees agreed to implement the recommendations made by the 5th C.P.C. qua the grant of non-functional selection grade to Group II All officers in toto, no reference at all was required to be made to the Central Government. If any reference came to be made inadvertently, it would not authorize the Central Government to decline concurrence to the decision taken by the Central Board of Trustees to implement the relevant Pay Commission recommendations with effect from 13.8.1999. Even at the cost of repetition, we may notice that the reference made to the Central Government is as much a surplusage as was the decision taken by the Central Government for the implementation of the decision aforementioned (taken by the Central Board of Trustees) with immediate effect and not with effect from 13.8.1999, in terms of the recommendations made by the Central Board of Trustees qua the date of implementation thereof.

10. We have, thus, no hesitation in holding that the 5th C.P.C. recommendations regarding the grant of non-functional selection grade to the relevant categories of employees of EPFO were to be implemented with effect from 13.8.1999.

11. Faced with the predicament aforementioned, the learned counsel appearing on behalf of the respondents argued that the O.A. is time-barred inasmuch as the relevant decision by the Central Government came to be taken in the year 2006; whereas, this O.A. came to be filed in the year 2010.

12. In this connection, the learned counsel for the applicant argued that the rejection of the representation in the relevant behalf having been communicated to the Central Provident Fund Commissioner vide letter's letter dated 24.11.2009 (Annexure A-3), the plea regarding bar of limitation stands adequately negated.

13. We find ourselves in agreement with the plea raised by the applicant on the point of limitation. Even otherwise, the denial of a pecuniary benefit at the hands of an authority competent in the relevant behalf, cannot be requested by raising a plea of limitation. It further requires to be noticed in particular that the Central Government did not disagree with the decision taken by the Central Board of Trustees in principle. That the Central Govt. did not agree with the recommendation that the implementation had to come about with effect from the date the decision was taken, does not wish away the acceptance of the decision in principle and does not bar the relevant remedy available for a continuing cause of action.
14. In the light of the aforementioned discussion, the O.A. shall stand allowed. While invalidating the fixture of the cut-off date by the Government of India for implementation of the non-functional selection grade with immediate effect, we would order that the respondents shall make the relevant grade available to the entitled categories of employees with effect from 13.3.1999, i.e. the date from which the Central Board of Trustees had recommended the grant thereof.

15. Before concluding, we may observe that though the Courts/Tribunals would advisedly refrain from interfering in the matter of grant or otherwise of the pay scales by the Government to its employees and there would also be noticeable reluctance on the part of the Courts/ Tribunals to interfere in the matter of fixture of a cut-off date by the Government, we are equally clear in our mind that the fixture of a cut-off date must be announced to have a noticeable rationale to the relevant grant.

In this particular case, the relevant Act does provide that the Central Board of Trustees is the competent authority in the matter of determination of the service conditions of its employees at different hierarchical levels. It is equally clear that the scales available to the Central Government employees would be applicable to the corresponding categories of employees of the Commissionerate. The prior approval of the Central Government is envisaged only when the Board recommends a departure from the general principle of parallel/ applicability. The present is not a case of that category. The matter did not, thus, have to be referred to the Central Government. Even if it had been referred, the competent authority in the Central Government ought to have been circumspect enough to decline the grant of concurrence and/or approval by communicating want of jurisdiction in the relevant behalf.

16. The O.A. shall stand disposed of accordingly.

17. There shall be no order as to the costs of the case in the facts and circumstances of the case.

(JUSTICE S.D. ANAND)
MEMBER(J)

(KHUSHI RAM)
MEMBER(A)

Dated: February 25, 2011

(O.A. No.400-HR of 2010)
applicable to the officers and employees of the Central Government drawing corresponding scales of pay.” Thus, it is only when a departure from the rules aforementioned is envisaged that the Board would be obliged to obtain the prior approval of the Central Government.

8. In the facts and circumstances of this case as instance of departure from the rules could be envisioned only when the Central Board of Trustees recommends a higher grade of pay or special pay etc. to a category of employees whose counterparts in the Central Government are not enjoying the same. In this case it is common ground that a non-functional selection grade had been allowed to Group A Officers of the Government of India. It is further apparent, from the pleadings raised by the parties, that the Central Board of Trustees agreed to the implementation of the 5th CPC recommendations to the employees of the respondent organization in toto. The only exception was the non-functional selection grade, the grant thereof was not decided upon by the Central Board of Trustees at a point of time when the decision was taken to implement the recommendations made by the 5th CPC. In common parlance, a decision had to be taken by the Central Board of Trustees about the grant or otherwise of the non-functional selection grade to the categories of employees of the respondent organization, corresponding to their counterparts in the Central Government. If the Board were to agree to implement the non-functional selection grade, it was not at all obliged to make a reference to the Central Government or to obtain prior approval therefore.
C.W.P. No. 8438 of 2011

At the same time the prior approval of the Central Government was compulsory in case the Central Board of Trustees were to refrain from implementing the recommendations of the 5th CPC qua the grant of non functional selection grade to the relevant categories of employees."

2. The aforesaid paras clearly propound the proposition that no permission from the Central Government was required and the original applicant-respondent was entitled to grant of NFSG as was approved by the Central Board of Trustees. There is, thus, no merit in the writ petition and the order passed by the Tribunal is wholly within the parameters of Section 5D(7) of the 1952 Act.

3. Accordingly, the present writ petition falls and the same is dismissed.

(M.M. KUMAR)
JUDGE

(GURDEV SINGH)
JUDGE

May 12, 2011
C.W.P. No. 8438 of 2011

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 8438 of 2011
Date of Decision 12.05.2011

Union of India and another Versus

Central Administrative Tribunal, Chandigarh and another

---Petitioners
---Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE GURDEV SINGH

Present: Mr. O.S. Batalavi, Advocate
for petitioner.

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in
the Digest?

M.M. KUMAR, J.

1. The instant petition under Article 226 of the Constitution
is directed against order dated 25.02.2011 (P-3) passed by
Chandigarh Bench of the Central Administrative Tribunal (for brevity
'the Tribunal') holding that the original applicant-respondent A.K.
Chandok was entitled to grant of non functional selection grade (for
brevity 'the NFSG') being Employees Provident Fund Organisation
(for brevity 'EPFO'). According to the Tribunal, the Board of Trustees
is the final authority in the matter of determination of service
condition of various categories of employees of EPFO. In that
regard, the Tribunal has placed reliance on Section 5D(7) of
Employees Provident Funds and Miscellaneous Provisions Act, 1952

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