C.W.P. No. 8438 of 2011

(for brevity 'the 1952 Act') and proceeded to hold that the Central Board of Trustees was not required to seek prior approval of the Central Government in a case where there was no departure from the rules or order. In other words, if the benefit of the NFSG was not extended to employees of the Central Government and the departure was being made in respect of the employees working in EPFO only then approval from the Central Government was required.

The view of the Tribunal is discernible from the following two paras of the judgment which reads as under:

"7. A perusal of the above quoted provisions 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 for 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 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
पत्र सं: AMG-IV/IR/3-52/EPFO/2013-16/

सेवा में,
आयुक,
कर्मचारी भर्तिव्य संघटन,
हुड़को विशाला, 14-शीकार जी कामा प्लेस
नई दिल्ली-110066

विषय: सार्व 2013-14 की अर्जित के लिए कर्मचारी भर्तिव्य संघटन के लेखा पर लेखापरीक्षा/निदेशन प्रतिवेदन।

महोदय,
पापन उल्लेखित लेखापरीक्षा/निदेशन प्रतिवेदन आयुक्त कार्यालय हेतु अनुदेश के साथ में जानी है कि इस सर्वे में आयुक्त कार्यालय निदेशन प्रतिवेदन की प्राप्ति के एक भाग के भीतर में होता है।

इस प्रतिवेदन में भाग VII (क भाग) के पैरागारं भाग II (A) के 1 से 4 एवं II (B) के 1 से 12 पाँच में इंगित की गई अन्य निदेशन और आयुक्त ध्यान निरोध रूप से आकृ ति किया जाता है।

द च सेवा परीक्षा अधिकारी
(सं, अधि, नी.-11)

पत्र सं: AMG-IV/IR/3-52/EPFO/2015-16/04 जून 2015

इस प्रतिवेदन की प्रति सरदया, भारत सरकार, भर्ति मंत्रालय, शासी भवन, नई दिल्ली को सुबधि तथा आवश्यक कर्मचारी हेतु अप्रविष्ट की जाती है।

दिनांक:

04/06/15

बॉर्ड सेवा परीक्षा अधिकारी
(सं, अधि, नी.-IV)

पत्र सं: AMG-IV/IR/3-52/EPFO/2015-16/

इस प्रतिवेदन की प्रति मुख्य लेखा अधिकारी, कर्मचारी भर्तिव्य संघटन, हुड़को विशाला, 14-शीकार जी कामा प्लेस नई दिल्ली-86 को सुलभि तथा आवश्यक कर्मचारी हेतु अप्रविष्ट की जाती है।

दिनांक:

2015/6/15

बॉर्ड सेवा परीक्षा अधिकारी (सं, अधि, नी.-IV)
Para 1 - Irregular grant of Non Functional Selection Grade in EPFO

The Department of Personnel and Administrative Reforms vide its O.M. dated 31.7.1982 had circulated the guidelines for introduction of Non Functional Selection Grade (NFSG) in Group ‘A’ Central Services and stated, inter-alia, that NFSG in the scale of Rs. 2000-2250 may be created above the Junior Administrative Grade Scale (Rs. 1500-2000) in Group ‘A’ Central Services. The basic criteria for implementation of NFSG were as follows:

a) Central Services Group ‘A’ where the scale of Rs. 2000-2250/- exists as a part of the cadre structure on functional basis, will not be eligible to have a non-functional selection grade unless the cadre controlling authorities decide to do away with the functional selection grade and opt in favour of a non-functional selection grade.

b) No officer shall be eligible for appointment to the non-functional selection grade unless he has reached the maximum of Rs. 2000/- in the scale of Rs. 1500-2000 or in the intermediate administrative grade as the case may be and has remained there for a period of two years.

Subsequently, the Department of Personnel, Public Grievances and Pensions vide its O.M. no. 22/1/2000-CRD dated 6.6.2000 issued to all Ministries, informed that pursuant to the recommendations of the Fourth Central Pay Commission, the Non Functional Selection Grade has been granted in all organised Group ‘A’ Central Services subject to the conditions as prescribed/modified from time to time as per the Department of Personnel and Training (DoP&T). It was further stated 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 O.M.), be increased to 30%. The main features of this Selection Grade were, inter-alia, as follows:

a) 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.

b) In organised Central Group ‘A’ Services, there is a non-functional selection grade in the pay scale of Rs. 14300-18300. This is an intermediary scale between the pay scales corresponding to Junior Administrative Grade (Rs. 12,000-16,500) and the Senior Administrative Grade (Rs. 18400-22400). In essence, therefore, the non-functional selection grade is intended to mitigate the rigours of stagnation which the officers in JAG may be exposed to for want of adequate number of posts in the higher grades. In other words, it is tantamount to an extended pay scale for holders of JAG.

2 The condition of remaining there for two years was removed vide DOPT O.M. no. 18/186-PP dated 14.8.1997.
posts, the pay scale of Rs. 12000-16500 being extended to Rs. 18300 under certain
conditions.

c) 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.

d) Further, the Selection Grade posts were to be carved out of JAG posts. 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).

In the EPFO, the various posts of Group 'A' Non-Ministerial cadre as on 31.3.2014 are as
follows:

<table>
<thead>
<tr>
<th>SI No.</th>
<th>Name of the post</th>
<th>Pay Scale (PB + GP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Central Provident Fund Commissioner (CPF)</td>
<td>80000</td>
</tr>
<tr>
<td>2.</td>
<td>Addl. Central Provident Fund Commissioner (Hqrs.)</td>
<td>37,400-67,000+10000</td>
</tr>
<tr>
<td>3.</td>
<td>Financial Advisor and Chief Accounts Officer (P&amp;A)</td>
<td>37,400-67,000+8700</td>
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<td>4.</td>
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<td>Chief Engineer</td>
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<td>10.</td>
<td>Regional Provident Fund Commissioner (RPF Gr. I)</td>
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<td>Regional Provident Fund Commissioner (RPF Gr. II/Dy.</td>
<td></td>
</tr>
<tr>
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<td>Director (Recovery)/Director (Audit)</td>
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EPFO vide its letter dated 1.1.2004, requested Ministry of Labour (Ministry) to
approve grant of NFSG of Rs. 14300-18300 in the cadre of Commissioner in EPFO. The
EPFO further vide its letter dated 22.11.2005 clarified certain points raised by the Ministry.
Subsequently, Ministry vide its letter dated 30.1.2006 conveyed its approval to grant of
NFSG in Commissioner’s cadre in EPFO. Further, 29 posts were to be operated in the NFSG
of Rs. 14300-18,500/ with immediate effect. Subsequent to approval of Ministry, EPFO
granted NFSG in the pay scale of Rs. 14300-18300/- to 25 RPFC Gr. I officers.

The Ministry, vide its letter dated 11.11.2007, turned down the proposal for EPFO
regarding grant of NFSG in EPFO w.e.f. 13.3.1999. EPFO vide its letters dated 7.8.2007,
27.6.2007 and 18.9.2007 requested for grant of NFSG w.e.f. 13.3.1999. The Ministry vide its
letter dated 24.11.2009 rejected the proposal of EPFO. Further, EPFO granted NFSG in
P.B.4 (Rs. 37400-67000 + Rs. 8700 GP) to another 23 officers vide its order dated 8.10.2010.

As per para (7)(a) of the Employee Provident Fund and Miscellaneous Provisions 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. 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. Further as per para 7(b), in determining the corresponding scales of pay of officers and employees under clause(a), the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

Subsequently, the Ministry vide its letter dated 29.8.2011, acceded to the request of EPFO to implement the grant of NFSG w.e.f. 13.8.1999 i.e. the date of approval by the Executive Committee, CBT, EPFO. In pursuance of the Ministry’s decision, EPFO vide its orders dated 2.1.2012 and 23.8.2013 granted NFSG to 127 and 19 officers.

However, the grant of NFSG (Rs. 37400-57000 + Rs. 8700 GP) to RPFC Gr.I officers is irregular in view of the following facts:

1) Central Service Group ‘A’ where the scale of Rs. 14300-18100/- (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 13.8.1999 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 officers was not furnished.

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 for 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.
posts, the pay scale of Rs. 12000-16500 being extended to Rs. 18300 under certain conditions.

c) 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.

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As per para (7)(a) of the Employee Provident Fund and Miscellaneous Provisions 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. 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. Further as per para 7(b), 'in determining the corresponding scales of pay of officers and employees under clause(s), the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

Subsequently, the Ministry vide its letter dated 29.8.2011, acceded to the request of EPFO to implement the grant of NFSG w.e.f. 13.8.1999 i.e. the date of approval by the Executive committee, CBT, EPFO. In pursuance of the Ministry's decision, EPFO vide its orders dated 2.1.2012 and 23.8.2013 granted NFSG to 127 and 19 officers.

However, the grant of NFSG (Rs. 37400-67000 + Rs. 8760 GP) to RPFC Gr.I officers is irregular in view of the following facts:

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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 IAG 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 13.8.1999 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 officers was not furnished.

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Subject: Brief on Non-Functional Selection Grade
To: samir.kumar70@nic.in
Cc: "CHAKRABORTY, CHANDRAMOULI" <chandramauli.ch@epfindia.gov.in>

Date: 03/07/18 04:25 PM
From: Sanjay Bishl <sanjay.bishl@epfindia.gov.in>

NOTE ON NFSG_07_03_2018.doc (75kb)

Kindly find a brief in enclosed attachment.

Regards,
Sanjay Bishl
Regional PF Commissioner-I
HRM Division, EPFO Head Office

https://mail.gov.in/iwc_static/layout/shell.html?lang=en&3.0.1.2.0_15121607 07-Mar-18
Subject: Proposal for grant of Non Functional Selection Grade (NFSG) to eligible officers holding the post of Regional P.F. Commissioner-I on regular basis.

Background

The Central Board has adopted the scheme for grant of Non Functional Selection Grade (NFSG) which is available to other comparable services in Government of India with the approval of the Central Government. Under the powers conferred by Section 5D (7) of the EPF & MP Act, 1952, the Central Board of Trustees is competent to determine the service conditions of the officers and staff and in accordance with the rules and orders as applicable to the officers and staff of the Central Government drawing corresponding scales of pay. In case, the Board is of the opinion that it is necessary to make a departure from the said rules or orders, it shall obtain prior approval of the Central Government. Accordingly the grant of NFSG to the officers of EPFO, has been implemented after receiving the express approval of the Government vide order No. A-11013/1/2004-SS-I dated 30.01.2006. A copy of the order is placed at CP.

2. Incidentally, after forwarding the proposal by EPFO Head Office vide letter dated 01.01.2004, the Ministry had raised an observation on grant of NFSG vide letter No. A-11013/1/2004-SS-I dated 28.01.2004 wherein it was observed that the grant of NFSG in the Scale of Rs. 14300-18300 may lead to practical and administrative difficulties in the functioning of the organisation because EPFO already has a functional Grade of Addl.CPFC in that scale of pay. ‘Bringing together of Non-functional and Functional Grades in the same scale of pay may not be a feasible proposition as it may lead to administrative inconvenience in the matter of posting, assigning duties and responsibilities and channel of submission etc.

3. The matter was thereafter further examined and a revised proposal was forwarded by the EPFO vide letter No. HRD/4(4)/2001/385 dated 14.06.2004. In the said letter, it was explained in the functional difficulties were not anticipated as in the field offices of EPFO. Non-functional post existing along with functional grade in various cadres where the Organisation is not experiencing any functional difficulties. It was further explained that there was an element of stagnation in the level of RPFC-I and to have motivated officers at higher level of hierarchy when promotional avenues to the posts of Addl. CPFC were very less, the NFSG Scheme was adopted and approved by the Board. It was also explained that the Board had also approved grant of functional Pay Scale of Rs. 15400-450-20000/- to Addl. CPFC and FA & CAO and NFSG was recommended for next below grade i.e., RPFC-I in the Scale of Rs. 14300-400-18300/-. 

4. This was followed by further proposal vide a note from CPFC addressed to Hon'ble Union Minister for Labour & Employment and Chairman, CBT, EPF reiterating the decision of the Board for implementation of NFSG for Group ‘A’ Officers in EPFO with further proposal to amend Para 22A of the EPF Scheme by the Government to enhance the power of the Board to make appointment to the post of maximum scale of Pay of Rs. 16400-450-20000/-. 

A-1203/22/2012-SS-I
5. Thereafter, further observations were communicated by the Ministry of Labour & Employment of the integrated Finance vide their letter dated 05.10.2005. A fresh proposal was forwarded to the Ministry after examining each observation of the integrated Finance and giving detailed functional justification vide letter No. HRD/4(4)2001/143 dated 23.11.2005. A copy of the reply given by EPFO to Ministry of Labour & Employment is enclosed at CP for perusal. With regard to functional justification for grant of NFSG to RPFC-I with special reference to the availability to the functional scale to Addl. CPFC and FA & CAO, Para-3 of the letter is very detailed and the same may be referred.

6. In pursuance of the approval received the NFSG Scheme has been implemented in EPFO w.e.f. 30.01.2006 whereas in the Central Government it was introduced with the implementation of 5th Central Pay Commission’s recommendations i.e. 01.01.1996. The Government while communicating the decision of the Competent Authority had conveyed that the Scheme for grant of Non Functional Selection Grade (NFSG) shall be operated in the Commissioners’ cadre of EPFO to the extent of 15% of the senior duty posts and 29 posts of RPFC-I in EPFO shall be operated in the NFSG (Rs.14300-18300) (Pre-revised) w.e.f. 30.01.2006 vide order No. A-11013/1/2004-SS-I dated 30.01.2006. A copy of the approval of the Ministry of Labour & Employment is placed at CP. The first Screening Committee was convened on 17.05.2006 and 26 officers holding the post of RPFC-I in the pay scale of Rs. 12000-375-16500 on regular basis were recommended for placement in the NFSG grade in the pay scale of Rs. 14300-400-18300 vide office order dated 08.06.2006. A copy of the Order dated 08.06.2006 is placed at CP.

7. Subsequently, Dr. A.K. Chandok, RPFC-I (Retd.) had filed an O.A. No. 400/HR of 2010 before CAT, Chandigarh Bench seeking implementation of NFSG in EPFO w.e.f. 13.08.1999 i.e. from the date approval given by Executive Committee, Central Board of Trustees in its 31st Meeting held on 13.08.1999. Hon’ble Tribunal had passed a reasoned order dated 25.02.2011 allowing the O.A. that the respondents should make the relevant grade available to the entitled categories of employees w.e.f. 13.08.1999 and to the extent of 30% of the senior duty posts in Group“A”. In its operative part of the judgement which is relevant to cite puts emphasis on the provisions of Section 5D(7) of the EPF & MP Act and competence of the Board as well as the Central Government to take decision on such administrative matters. The Department had challenged the Order of Hon’ble CAT before the High Court of Punjab and Haryana by filing Civil Writ Petition No. 8438/2011. However, Hon’ble Vide its order dated 12.05.2011 had dismissed the Writ Petition as devoid of merits and had upheld the Order of Hon’ble CAT as wholly within the parameters of Section 5D(7) of the EPF & MP Act.

8. The decision of Hon’ble-CAT was challenged by the Department before Hon’ble High Court of Punjab & Haryana vide CWP No. 8438/2010. However, Hon’ble High Court of Punjab & Haryana dismissed the Writ Petition on merits vide Order dated 12.05.2011 upholding the order of the Hon’ble CAT dated 25.02.2011. The judgement of Hon’ble High Court was further examined in the Ministry and the Ministry of Labour & Employment had communicated vide their letter dated 29.08.2011 that the matter was referred to Additional Solicitor General of India who had opined that the approach of Hon’ble High Court is justified and reasonable and it was not a fit case for filing SLP.
9. The matter was finally decided by the Government and the Ministry of Labour & Employment vide letter No. S-38016/50/2009-SS.I dated 29.08.2011 had conveyed the decision to implement the order of Hon’ble CAT to grant NFSG to the extent of 15% of the senior duty posts w.e.f. 13.08.1999 and to the extent of 30% of the senior duty posts w.e.f. 14.07.2011 within the powers of the CBT as directed by Hon’ble CAT in its order dated 25.02.2011. Consequent to the aforesaid decision of Hon’ble High Court, a further meeting of the Screening Committee was held on 31.10.2011 under which recommended year-wise panel for placement of RPFC-I officers in the NFSG i.e. in the PB-4 (Rs. 37400-67000) with Grade Pay of Rs. 8700/- for the vacancy years 1999 to 2011. There were 127 officers granted the benefits of NFSG vide officer No. HRM-I/D-18(1)/2006/Vol.II/4227 dated 02.01.2012. A copy of the office order dated 02.01.2012 is placed at CP______. Thus, the NFSG Scheme is under implementation w.e.f. 13.08.1999 in EPFO.

Procedure followed for grant of NFSG

10. The procedure prescribed for placement in NFSG, the eligibility norms and other conditions are as follows. The DOP&T O.M. No. 28038/1/88-Estt.(D) Dt. 09.10.1989 and O.M. No. 22/2/2000-CRD Dated 06.06.2000 refer to the procedure and conditions:

(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 OM dated 09.11.1989.

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

(viii) The officers should meet the prescribed bench mark for placement in NFSG.

(ix) The officers should be free from Vigilance angle.

11. As per the procedure laid down by the DOP&T for grant of NFSG, an internal Screening Committee has to be constituted for screening the service records of the officers and APARs. In reference to an UO Note dated 27.01.2010 of HRM, the MoL&E vide letter No.A-32022/3/2010-SS dated 02.02.2010 had conveyed the approval of the competent authority to the constitution of the Internal Screening Committee consisting of the following members for considering NFSG:-

(i) Central P.F. Commissioner - Chairman
(ii) Addl. Secretary (L&E) - Member
(iii) Joint Secretary (L&E) - Member
12. The last meeting of the Internal Screening Committee was held on 07.08.2013 to consider the grant of NFSG to officers who had become eligible for the year 2012-2013 and the Screening Committee had considered the cases of these officers. Consequent orders were issued on 23.08.2013 to grant NFSG to 19 officers including 02 officers who were left out during the year 2003.

13. It is further submitted that the grant of NFSG for the year 2014 onwards has been put in abeyance as an audit observation was communicated by the Inspecting Team of the DGACR which had visited Headquarters for conducting of the year 2013-14. The Audit team had raised the following two main observations on the grant of NFSG:

1) That Central Services 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 13.08.1999 to 01.08.2013, 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.

14. It is submitted that reply to audit para was furnished to the Inspecting Team but the audit para has not been dropped. A reply was also sent at the level of ACC (HQ) with the approval of the CPFC to Deputy DGACR to drop the para vide D.O. letter No. HRM-I/Misc./RC-1/2010/15281 dated 12.09.2016 explaining the background of the adoption and implementation of the NFSG scheme in EPFO.

15. Consequent to the raising of audit para, it was decided to place an Agenda Item in 82nd Executive Committee held on 20.08.2015 on grant of NFSG to apprise the Executive Committee of the audit observation and for a decision to forward the case to Government for in-depth examination. Thereafter, the matter has been raised in the subsequent meetings of the Executive Committee wherein action taken is being submitted from time to time on the status of the matter referred. With regard to examination of the matter by the Government, it was sent to Mo&SE vide a D.O. letter from ACC (HQ) HR to JS (SS) in Mo&SE dated 02.12.2016 and the reply is yet to be received from Government in the matter.

Cadre restructuring and its implication
16. Meanwhile a comprehensive Organizational and Cadre Restructuring recommendations made by the Sub-Committee of the Central Board was approved by the Central Board in its 213th meeting of the Central Board held on 08.07.2016. The recommendations were forwarded to the Ministry of Labour & Employment and the Government conveyed its approval vide Order No. A-32022/10/2014-SS.I dated 27.12.2016 and the recommendations have been implemented. In Group A, additional creation have been approved at the level of Addl. CPFC (HQ) in PB-4 with Grade Pay of Rs. 10,000. The existing grades of Addl. CPFC-I in PB-4 with GP of Rs. 8900 and Addl. CPFC-II in PB-4 with GP of Rs. 8700 have been merged and a new post of Addl. CPFC in PB-4 with GP of Rs. 8900 has been created. The functional grade in PB-4 with G.P. of Rs. 8700 has been removed. The position of RPFC-I (NFSG) has been retained in PB-4 with G.P. of Rs. 8700 with the stipulation that Officers with 14 years of service in Group 'A' to be placed in this grade. Additional creation of posts have been made in RPFC-I and RPFC-II level also.

17. After creation of additional posts the DPCs have been held in accordance with the existing Recruitment rules and the officers in the feeder posts who are eligible have been promoted to the higher post and against the consequential vacancies. As has been mentioned in Para 5 above, the last Internal Screening Committee was held for the year 2013 and thereafter many officers in the grade of RPFC-I who are eligible are awaiting placement in NFSG. In fact one of the batches, few officers have been placed in NFSG in the year 2013 itself and rest are yet to be granted NFSG which is also generating discontentment among the officers.

Proposal and justification for grant of NFSG

18. The grant of NFSG to the eligible officers of EPFO holding the post of RPFC-I on regular basis is justified on account of the following :-

(i) The audit observation has been made without appreciating the fact that the NFSG Scheme had been approved by the Government under the provisions of section 5 D (7) of the EPF and MP Act, 1952 after examining and considering all the issues related to it. The Ministry of Labour & Employment vide its letter dated 30.01.2006 has conveyed the approval of Hon’ble LEM/Chairman, CBT(EPP) to operate 29 posts in the RPFC-I in EPFO in the Non-Functional Selection Grade of Rs. 14,300-18,300 with immediate effect.

(ii) In pursuance of the judgement of Hon’ble High Court of Punjab in A.K. Chandok’s case the MOL&E has further conveyed vide letter No. S-38016/50/2008-SS.I dated 29.08.2011 to implement NFSG to the eligible officers w.e.f. 13.08.1999 and to operate 30% of the senior duty posts for placement in the NFSG.

(iii) The judgement of Hon’ble High Court was further examined in the Ministry and the Ministry of Labour & Employment had communicated vide their letter dated 29.08.2011 that the matter was referred to Additional Solicitor General of India who had opined that the approach of Hon’ble High Court is justified and reasonable and it was not a fit case for filing SLP. Therefore, to say that the Scheme of NFSG which was implemented in EPFO was irregular or
illegal will be without any basis whereas it has been implemented with the due approvals of the Competent Authority with administrative as well as financial justifications.

(iv) The audit observation that the officer to be considered for grant of NFSG should stagnate at maximum of Junior Administrative Grade (JAG) for minimum of two years for placement in NFSG has been superseded and is no longer in operation as per subsequent clarification issued by the DOP&T vide O.M. No. 19/1/1986-PP dated 14.08.1987. At present the grant of NFSG is governed by the instructions issued by the DOP&T vide O.M. No. 22/1/2000-CRD dated 06.06.2000.

(v) The placement in RPFC-I (NFSG) grade is made to the extent the slots are vacant and after examining the fitness of the officer who are meeting the eligibility conditions subject to their Vigilance clearance.

(vi) As per the approved Cadre restructuring recommendations, the functional grade of Addl. CPFC-II in the Pay Band-4 with grade pay of Rs.8700 has been removed as it stands merged in the higher post of Addl. CPFC in Pay Band-4 with Grade pay of Rs. 8900 w.e.f. 27.12.2016.

(vii) The number of officers to be placed in NFSG shall be limited upto 30% of the Senior Duty Posts which comes to 173 posts. (30% of total posts sanctioned for ACC (HQ) - 13, ACC - 32, RPFC-I 239 and RPFC-II- 299). As per the incumbency position of officers holding the post of RPFC-I in regular basis, there are 150 officers in position out of which 27 officers are already placed in NFSG. There are 116 officers holding the post of RPFC-I (JAG) to be considered for placement in the grade of RPFC-I (NFSG) in the Grade pay of Rs. 8700.

(viii) The Organisation has implemented the non-functional grades in all the comparable posts in Central Government in accordance with the DOPT instructions in Group "B" and "C" posts.
Subject: Revised cadre strength/sanction of posts consequent to Implementation of Organizational and Cadre Restructuring in EPFO.

The Ministry of Labour & Employment, Government of India vide its letter no. A-32022/10/2014-SS-I dated 27th December, 2016 has conveyed the approval of Government of India on the proposal of Organizational and Cadre Restructuring in EPFO. Accordingly, the revised sanction of following posts is notified:

<table>
<thead>
<tr>
<th>CADRE</th>
<th>Existing Sanction</th>
<th>Creation</th>
<th>Revised Cadre Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Central PF Commissioner (HQ)</td>
<td>4</td>
<td>9</td>
<td>13</td>
</tr>
<tr>
<td>(PB-4; 37,400-67,000 plus GP 10,000) / [level 14 in the Pay Matrix]</td>
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<tr>
<td>Note: FA &amp; CAO, CVO and two posts of ACC (HQ) included in the list of 13 officers, to be filled on deputation.</td>
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</tr>
<tr>
<td>Additional Central PF Commissioner (PB-4; 37,400-67,000 plus GP 8900) / [level 13 (A) in the Pay Matrix]</td>
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<td>32</td>
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<td>Additional Central PF Commissioner-I (PB-4; 37,400-67,000 plus GP 8900) / [level 13 (A) in the Pay Matrix]</td>
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<tr>
<td>Note: ACC-I &amp; ACC-II posts are merged and new cadre of Additional CPFC is created. The incumbents in ACC-I and ACC-II will continue holding their posts till they are appointed as ACC.</td>
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<tr>
<td>CADRE</td>
<td>Existing Sanction</td>
<td>Creation</td>
<td>Revised Cadre Strength</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
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<tr>
<td>Additional Central PF Commissioner-II</td>
<td>15</td>
<td>-15</td>
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<tr>
<td>(PB-4; 37,400-67,000 plus GP 8700)/ [level 13 in the Pay Matrix]</td>
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<tr>
<td>Regional P.F. Commissioner -I</td>
<td>59</td>
<td>180</td>
<td>239</td>
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<tr>
<td>(PB-3; 15,600-39100 plus GP 7600)/ [level 12 in the Pay Matrix]</td>
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<tr>
<td>Regional P.F. Commissioner-II</td>
<td>226</td>
<td>73</td>
<td>299</td>
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<td>(PB-3; 15,600-39100 plus GP 6600)/ [level 11 in the Pay Matrix]</td>
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<tr>
<td>Assistant PF Commissioner</td>
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<td>452</td>
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<td>(PB-3; 15,600-39100 plus GP 5400)/ [level 10 in the Pay Matrix]</td>
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<tr>
<td>Enforcement Officer/Account Officer</td>
<td>2333</td>
<td>739</td>
<td>3072</td>
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<tr>
<td>Revised Pay Grade</td>
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<td></td>
</tr>
<tr>
<td>(PB-2; 9300-34800 plus GP 4800)/ [level 8 in the Pay Matrix]</td>
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<tr>
<td>Existing Pay Grade</td>
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<tr>
<td>(PB-2; 9300-34800 plus GP 4600)/ [level 7 in the Pay Matrix]</td>
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<tr>
<td>Section Supervisor</td>
<td>2680</td>
<td>18</td>
<td>2698</td>
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<td>Revised Pay Grade</td>
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<tr>
<td>(PB-2; 9300-34800 plus GP 4600)/ [level 7 in the Pay Matrix]</td>
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<tr>
<td>Existing Pay Grade</td>
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<tr>
<td>(PB-2; 9300-34800 plus GP 4200)/ [level 6 in the Pay Matrix]</td>
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<tr>
<td>Social Security Assistant/</td>
<td>13,633</td>
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<td>12,503</td>
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<td>Senior Social Security Assistant</td>
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<td></td>
</tr>
<tr>
<td>Pay Grades (New recruits)</td>
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<tr>
<td>(PB-1; 5200-20200 plus GP 2800)/ [level 5 in the Pay Matrix]</td>
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<tr>
<td>(PB-2; 9300-34800 plus GP 4200)/ [level 6 in the Pay Matrix]</td>
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<td>Pay Grade (Existing personnel)</td>
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<td>(PB-1; 5200-20200 plus GP 2400)/ [level 4 in the Pay Matrix]</td>
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<tr>
<td>(PB-1; 5200-20200 plus GP 2800)/ [level 5 in the Pay Matrix]</td>
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</tbody>
</table>
6. All RPFC in Charge of RO/SRO/ZTI

For information through web circulation to:-

1. PS to Chief Vigilance Officer
2. PS to Chief Engineer
3. RPFC (NDC) for uploading the same in website.
4. All Officers, EPF Headquarters, New Delhi
5. Secretary General EPF Officers' Association, Ludhiana
6. Secretary General, All India EPF Staff Federation, Hyderabad

(Rajesh Bansal)
Additional CPFC (HQ)
To,

The Central Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi-110 066.

Sub:-Grant of NFSG in the Grade Pay of Rs.8700/- in EPFO-regarding.

Sir,

With reference to subject cited above, kindly recall the meeting held in the Parliament in the Chamber of Hon'ble Minister on 2.8.2017 wherein the matter regarding grant of NFSG post Cadre Restructuring was discussed.

2. It was decided to delink the cases of NFSG granted prior to Cadre Restructuring from the cases due after the 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.

Yours faithfully,

[Vinod Kumar]
Director(SS)

Copy for information to PS to MOS(I/C).
<table>
<thead>
<tr>
<th>CADRE</th>
<th>Existing Sanction</th>
<th>Creation</th>
<th>Revised Cadre Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matrix] after four years service.</td>
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<tr>
<td>(PB-2; 9300-34800 plus GP 4200)/[level 6 in the Pay Matrix] to 60% of the total cadre strength.</td>
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<td>5</td>
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<td>Director (IS)</td>
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<td>30</td>
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<td>Joint Director (IS)</td>
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<td>(PB-3; 15,600-39100 plus GP 7600)/[level 12 in the Pay Matrix]</td>
<td>18</td>
<td>42</td>
<td>60</td>
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<td>(PB-3; 15,600-39100 plus GP 6600)/[level 11 in the Pay Matrix]</td>
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<td>64</td>
<td>120</td>
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<td>Assistant Director (IS)</td>
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<td>(PB-3; 15,600-39100 plus GP 5400)/[level 10 in the Pay Matrix]</td>
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<td>Programmer</td>
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<td>(PB-2; 9300-34800 plus GP 4800)/[level 8 in the Pay Matrix]</td>
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<td>65</td>
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<td>DPA</td>
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<td>(PB-2; 9300-34800 plus GP 4600)/[level 7 in the Pay Matrix]</td>
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<tr>
<td>DEO Grade ‘A’</td>
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<tr>
<td>(PB-1; Rs.5200-20200 Grade Pay Rs.2400)/[level 4 in the Pay Matrix]</td>
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<td>DEO Grade ‘B’</td>
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<td>(PB-1 Rs.5200-20200 plus GP Rs.2800)/[level 5 in the Pay Matrix]</td>
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<td>DEO Grade ‘C’</td>
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<td>(PB-2; 9300-34800 plus GP 4200)/[level 6 in the Pay Matrix]</td>
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<td>Note: Posts in the cadre will be abolished once the existing personnel vacate them.</td>
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<tr>
<td>Director (OL)</td>
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<td>(PB-3; 15,600-39100 plus GP 7600)/[level 12 in the Pay Matrix]</td>
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<td>(PB-3; 15,600-39100 plus GP 6600)/[level 11 in the Pay Matrix]</td>
<td>4</td>
<td>6</td>
<td>10</td>
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<tr>
<td>CADRE</td>
<td>Existing</td>
<td>Creation</td>
<td>Revised Cadre Strength</td>
</tr>
<tr>
<td>--------------------------------------------</td>
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<tr>
<td>Pay Matrix</td>
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<tr>
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<td>Sr. Hindi Translator</td>
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<td>-9</td>
<td>57</td>
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<tr>
<td>Jr. Hindi Translator</td>
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<td>70</td>
<td>97</td>
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<td>Principal Private Secretary</td>
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<td>103</td>
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<td>(PB-3; 15,600-39100 plus GP 6600)/[level 11 in the Pay Matrix]</td>
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<td>Private Secretary</td>
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<td>153</td>
<td>205</td>
</tr>
<tr>
<td>(PB-2; 9300-34800 plus GP 4800)/[level 8 in the Pay Matrix]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Assistant</td>
<td>103</td>
<td>331</td>
<td>434</td>
</tr>
<tr>
<td>(PB-2; 9300-34800 plus GP 4600)/[level 7 in the Pay Matrix]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stenographer</td>
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<td>84</td>
<td>187</td>
</tr>
<tr>
<td>(PB-1; 5200-20200 plus GP 2400)/[level 4 in the Pay Matrix]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section Officer</td>
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<td>109</td>
<td>196</td>
</tr>
<tr>
<td>(PB-2; 9300-34800 plus GP 4800)/[level 8 in the Pay Matrix]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistant</td>
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<td>249</td>
<td>400</td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi Tasking Staff</td>
<td>2349</td>
<td>-1093</td>
<td>1256</td>
</tr>
<tr>
<td>(PB-1; 5200-20200 plus GP 1800)/[Level 1 in the Pay Matrix]</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

To

1. All Additional CPFC (Zone)
2. Additional CPFC (ASD)
3. FA & CAO
4. Director PDUNASS
5. The Registrar, EPF Appellate Tribunal

- for immediate necessary actions at their end for implementation of proposal.
कार्यालय महानिदेशक सेवापरीक्षा
केन्द्रीय व्यय, नई दिल्ली 110 002.

पत्र सं: AMG-IV/IR/5-24/EPFO(HQ)/2017-18/  
दिनांक: 05.04.2018

सेवा में,
आदेश, कर्मचारी भविष्य निदेश
कर्मचारी भविष्य निदेश संगठन, भविष्य निदेश भवन
14 शीकारी भाग फ्लैस
नई दिल्ली- 110 066.

विषय: वर्ष 2016-17 की अवधि के लिए कर्मचारी भविष्य निदेश संगठन के लिए सेवापरीक्षा/निरीक्षण

महादेश,
उपयुक्त उल्लिखित लेखापरीक्षा/निरीक्षण प्रतिवेदन आवश्यक कार्यवाही हेतु अनुरोध के साथ भेजी जाती है कि इस
संदर्भ में आपका उद्देश्य निरीक्षण प्रतिवेदन की प्राप्ति के लिए एक माह के भीतर भेजा जाए।
इस प्रतिवेदन में भाग I/II (कक्ष) के पैराग्राफ से (II A) के 5 एवं (II B) के 01 से 17 पृष्ठों में इंगित की गयी
अनिश्चितताओं की ओर आपको ध्यान विशेष रूप से आकृति किया जाता है।

महादेश,

दिनांक: 05.04.2018
पत्र सं: AMG-IV/IR/5-24/EPFO(HQ)/2017-18/  

इस पत्र की प्रति सूचना लेखा प्रभाव कर्मचारी भविष्य निदेश संगठन, भविष्य निदेश भवन भीकारी कामाधिकोष, नई
दिल्ली 110006 को सूचना एवं आवश्यक कार्यवाही हेतु अनुरोध की जाती है।
rejection the NFSG also got rejected as DOPT prescribed that non functional posts cannot co-exist with functional posts.

2. In the EPFO the various posts of Group A Non Ministerial cadre as on 31.3.2014 are operational (Annex V).

3. Further after a gap of five years the EPFO vide its letter dated 1.1.2004 requested Ministry to approve grant of NFSG of Rs 14300-18300 in the cadre of Commissioner in EPFO. Subsequently, Ministry vide its letter dated 30.1.2006 conveyed it approval to the grant of NFSG in Commissioner’s cadre in EPFO. Further 29 posts were to be operated in the NFSG of Rs. 14300-18300 with immediate effect. Subsequent to the approval of the Ministry, EPFO granted NFSG in the pay scale of Rs. 14300-18300 to 23 RPFC Gr. I Officers.


5. Subsequently the Ministry vide its letter dated 29.8.2011 acceded to the request of EPFO to implement the grant of NFSG w.e.f 13.8.1999 i.e the date of approval by the Executive Committee, CBT, EPFO. In pursuance of Ministry’s decision EPFO vide its letter dated 2.1.2012 and 23.8.2013 granted NFSG to 127 and 19 officers.

6. Audit contention is that the grant of NFSG in EPFO is irregular in view of the fact that Central Civil Services Group A where the scale of Rs 14300-18300 exists as a part of the cadre structure on functional basis will not be eligible to have non functional selection grade unless the cadre controlling authority decides to do away with the functional selection grade. In EPFO five functional posts of PA & CAO, ADDL CPFC II, Chief Vigilance Officer, Director (Vigilance) exist which have a total sanctioned strength of nine.

7. Secondly the pay commission had also stipulated that the officers to be placed in the selection grade should have reached the maximum of the Junior Administrative Grade and have remained there for two years. In EPFO the eligibility to NFSG is being granted to RPFC (Gr. I) in the corresponding JAG pay scale of Rs.15600-39100+G.P. of 7600 irrespective of their period of service in RPFC Gr.I. Out of 22 officers who had been granted NFSG during the period 13.8.1999 to 13.8.2013 it was noticed that six officers were granted NFSG w.e.f the date of 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.
8. EPFO stated that NFSG was given after orders of the Honorable CAT, Chandigarh bench on 25.02.2011 and same was reiterated by the Divisional Bench in High Court of Punjab and Haryana. But the judgment says that if Board has taken a decision in accordance with the rules (para 7(a) and 7(b) of the Employees Provident Fund and Miscellaneous Provisions, Act 1952) and orders applicable to the officers and employees of the Central Government only then Government cannot interfere in it. The decision of the Central Board to grant NFSG to the officers of EPFO without doing away with the Functional Selection Grade is contrary to the instructions of DOPT and also not in accordance with the judgment of the Punjab and Haryana High Court.

9. Due to irregular grant of NFSG to 22 officers (Annex IV) at EPFO headquarters an amount of Rs.1.31 crore was paid from the date of grant of NFSG till December 2014. Date of retirement/date of promotion to the post of ACC in excess of the admissible pay and allowances. The information relating to field offices has been called for and is awaited. EPFO may issue instructions to their branch offices to review similar cases and point out the excess payment.

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 organization 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 46 dated 21.2.2018 requisitioning related files, records and reply of the above SOF were issued. Reminder III dated 26.2.2018 and Reminder IV dated 26.2.2018 were also issued to follow up the memos but no reply was received till the close of audit.

10. 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.

The Central Board of EPFO vide office order no. HRM/I/1(1)2017/CR/26417 dated 13.01.2017 has been granted the powers to create posts up to the level of Joint Secretary of Government of India, clearing the way for further grant of NFSG in EPFO.

In this regard half margin No. 9 was issued on 27.2.2018 but no reply was received till the close of audit.
No. HRM-I/Misc./2017/Audit Para /6497-68-00

To

Sh. Gurinder Singh Chawla
Director (AMG-IV)
Office of the Director General of Audit
Central Expenditure, AGCR Building
I.P.Estate, New Delhi-110002.

Subject: Reply to Audit Para 1 (Part-II-A) of Audit Report (2018) on the Irregular Grant of “Non Functional Selection Grade” in EPFO regarding.

Sir,

I am directed to invite a reference to your office letter No. AMG-IV/IR/5-24/EPFO(HQ)/2017-18 dated 05.04.2018 forwarding therewith a report of the DGACR for the year 2016-17.

2. In this regard, a reply to Audit Para-1(Part-II-A) on “Non Functional Selection Grade” along with the necessary enclosures for your kind perusal and further action.

3. This issues with the approval of Central PF Commissioner.

Yours faithfully

(Sanjay Bisht)
Regional P.F Commissioner-I (HRM)

Copy to: Sh. Samir Kumar Das, Under Secretary, Ministry of Labour & Employment

for information with respect to D.O No: Z-16025/1/2013-SS.II(Pt) dated 24.04.2018 on grant of NFGS to the cadre of RPFC-I with copy of the reply for information and necessary action.
Part II - Audit Findings

Part II - A

Brief facts regarding granting of Non Functional Selection Grade in EPFO:

EPFO vide its letter No. HRD/4(4)/2001/1970 dated 01.01.2004 has forwarded a detailed proposal to Ministry of Labour & Employment for implementation of NFSG in the pay scale of Rs. 14300-18300/- in the cadre of commissioners in EPFO. Thereafter Ministry had raised an observation on grant of NFSG vide letter No. A-11013/2004-SS.I dated 28.01.2004 wherein it was observed that the grant of NFSG in the Scale of Rs. 14300-18300 may lead to practical and administrative difficulties in the functioning of the Organization because EPFO already has a functional grade of Addl. CPFC in that scale of pay. Bringing together of Non-functional and functional grades in the same scale of pay may not be feasible proposition as it may lead to administrative inconvenience in the matter of posting, assigning duties and responsibilities and channel of submission etc.

2. The matter was thereafter further examined and a revised proposal was forwarded by the EPFO vide letter No. HRD/4(4)/2001/385 dated 14.06.2004. In the said letter, it was explained that the functional difficulties were not anticipated as in the field offices of EPFO, Non-functional post existing alongwith functional grade in various cadres where the Organization is not experiencing any functional difficulties. It was further explained that there was an element of stagnation in the level of RPF/CPFC-I and to have motivated officer at higher level of hierarchy when promotional avenues to the posts of Addl. CPFC were very less, the NFSG Scheme was adopted and approved by the Board. It was also explained that the Board had also approved grant of functional pay scale of Rs. 16400-20000 to Addl. CPFC and FA & CAO and NFSG was recommended for next below grade i.e RPF/CPFC-I in the scale of Rs. 14300-18300/-. 

3. This was followed by further proposal vide a note from CPFC addressed to Hon’ble Union Minister for Labour & Employment and Chairman, CBT, EPF reiterating the decision of the Board for implementation of NFSG for Group A Officers in EPFO with further proposal to amend Para 22A of the EPF Scheme by the Government to enhance the power of the Board to make appointment to the post of maximum scale of pay of Rs. 16400-450-20000/-.

4. Thereafter, the Ministry of Labour & Employment vide letter No. A-11013/1/2004/SS-I dated 05.10.2005 had conveyed that the proposal of EPFO was referred to Integrated Finance Division (IFD) of the Ministry which had made 05 (Five) observations on the proposal and it was directed that the issues raised by the (IFD) may be clarified and proposal examined accordingly. With regard to observations communicated by the Ministry of Labour & Employment, vide their letter dated 05.10.2005, a fresh proposal was forwarded to the Ministry after examining each observation of the Integrated Finance Division and giving detailed functional justification vide letter No. HRD/4(4)/2001/1443 dated 23.11.2005. A copy of the reply given by EPFO to Ministry of Labour & Employment is enclosed in Annexure-A for perusal. With regard to availability to the functional scale to Addl. CPFC and FA & CAO, Para-3 of the letter is very detailed and the same may be referred.
5. On considering of the proposal as well as the replies furnished by the EPFO, the Ministry had approved the Scheme of NSFSG to be implemented in the Commissioners cadre of EPFO with the approval of the Chairman, CBT, EPF/Hon’ble LEM vide order No. A-11013/1/2004-SS-I dated 30.01.2006. A copy of the approval of the Ministry of Labour & Employment is placed at Annexure-B. The Government while approving the NSFSG Scheme had further given directions that 29 posts of RPFC-I in EPFO shall be operated in NSFSG grade of Rs. 14300-18300/- immediate effect. Thereafter, the Organization has implemented the Scheme and Screening Committee were held consisting of senior officers and prescribed norms for placement as well as procedure was followed for grant of NSFSG.

6. The above reply is on the background of functional justification which was provided to the Government for seeking approval for grant of NSFSG and the Scheme has been implemented after receiving express approval of the Government.

7. In pursuance of the approval received the NSFSG Scheme has been implemented in EPFO w.e.f. 30.01.2006 whereas in the Central Government it was introduced with the implementation of 5th Central Pay Commission’s recommendations i.e. 01.01.1996. As has been stated in Para 5 above the Government while communicating the decision of the Competent Authority had conveyed that the Scheme for grant of Non Functional Selection Grade (NSFSG) shall be operated in the Commissioners’ cadre of EPFO to the extent of 15% of the senior duty posts and 29 posts of RPFC-I in EPFO shall be operated in the NSFSG (Rs.14300-18300) (Pre-revised) w.e.f 30.01.2006. The first Screening Committee was convened on 17.05.2006 and 26 officers holding the post of RPFC-I in the pay scale of Rs. 12000-375-16500 on regular basis were recommended for placement in the NSFSG grade in the pay scale of Rs. 14300-400-18300 vide office order dated 08.06.2006. Consequent to the implementation of the NSFSG Scheme in the Commissioners cadre of EPFO, the grant of Non Functional Selection Grade (NSFSG) has been allowed to all the RPFC-I officers by following the prescribed procedure and the officer who are fulfilling the eligibility norms have been granted NSFSG subject to the ceiling approved by the Government.

8. A further Agenda was placed before the Executive Committee of the Central Board in its 72nd Meeting held on 14.07.2011 to enhance the existing ceiling of 15% approved by the Government to operate the Senior Duty Posts for granting NSFSG to that of 30% which was applicable to other Group ‘A’ services by virtue of DoR&T instructions contained in Office Memorandum No. 22/1/2000-CRD dated 06.06.2000 revising the existing ceiling from 15% of Senior Duty Post to 30% of Senior Duty Post. The same was approved by the Executive Committee and it was implemented w.e.f. 14.07.2011.

9. In the matter of grant of NSFSG on the date of its implementation, one of the retired officers namely, Dr. A.K. Chandok, RPFC-I (Retd.) had filed a petition before Hon’ble CAT, Chandigarh Bench vide O.A. No. 400/HR/2010. It was pleaded before the Hon’ble CAT that the benefit of NSFSG should be made application w.e.f. 13.08.1999 i.e. the date of Board had taken the decision to implement grant of NSFSG instead of 30.01.2006 as decided by the Government earlier.

10. Hon’ble Tribunal had passed a reasoned order dated 25.02.2011 allowing the O.A. that the respondents should make the relevant grade available to the entitled categories of
employees w.e.f. 13.08.1999 and to the extent of 30% of the senior duty posts in Group "A". In its operative part of the judgement which is relevant to cite, puts emphasis on the provisions of Section 5D(7) of the EPF & MP Act and competence of the Board as well as the Central Government to take decision on such administrative matters. The Department had challenged the Order of Hon'ble CAT before the High Court of Punjab and Haryana by filing Civil Writ Petition No. 8438/2011. However, Hon'ble High Court of Punjab vide its order dated 12.05.2011 had dismissed the Writ Petition as devoid of merits and had upheld the Order of Hon'ble CAT as wholly within the parameters of Section 5D(7) of the EPF & MP Act.

11. The judgement of Hon'ble High Court was further examined in the Ministry and the Ministry of Labour & Employment had communicated vide their letter dated 29.08.2011 that the matter was referred to Additional Solicitor General of India who had opined that the approach of Hon'ble High Court is justified and reasonable and it was not a fit case for filing SLP.

12. The matter was finally decided by the Government and the Ministry of Labour & Employment vide letter No. S-38016/50/2008-SS.I dated 29.08.2011 had conveyed the decision to implement the order of Hon'ble CAT to grant NFSG to the extent of 15% of the senior duty posts w.e.f. 13.08.1999 and to the extent of 30% of the senior duty posts w.e.f 14.07.2011 within the powers of the CBT as directed by Hon'ble CAT in its order dated 25.02.2011. A copy of NOL&E letter dated 29.08.2011 is placed at Annexure-C. Consequent to the aforesaid decision of Hon'ble High Court, a further meeting of the Screening Committee was held on 31.10.2011 under the which recommended year-wise panel for placement of RPFC-I officers in the NFSG i.e., in the PB-4 (Rs. 37400-67000) with Grade Pay of Rs. 8700/- for the vacancy years 1999 to 2011. There were 127 officers granted the benefits of NFSG vide officer No. HRM-I/D-18(1)/2006/Vol.II/4227 dated 02.01.2012. Thus, the NFSG Scheme is under implementation w.e.f. 13.08.1999 in EPFO.

13. Therefore, keeping the above facts into consideration it will not be a correct conclusion to say that the Scheme of NFSG which was implemented in EPFO was irregular or illegal. It is stated that it has been implemented with due approvals of the Competent Authority with administrative as well as financial justifications.

14. Considering the above preliminary submissions, the parwise reply to the Audit Findings Para.1 is given as follows:

Para 1: Irregular Grant of “Non Functional Selection Grade”

<table>
<thead>
<tr>
<th>Paras</th>
<th>Reply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Para-1: EPFO Board had recommended in the 31st Meeting held on 31.06.1999 to give Non Functional Selection Grade (NFSG) to Employees Provident Fund Officers (EPFO) after ensuring that there are no functional posts in NFSG Grade of Group 'A' Officers by upgrading the functional posts in the pay scale of 14300-18300 to 16400-20000.</td>
<td>It is admitted that the EPFO Board had recommended in its 31.08.1999 to grant Non Functional Selection Grade (NFSG) to EPF officers by upgrading the functional posts the pay scale of Rs. 14300-18300/- to Rs. 16400-20,000/-. The Board had considered recommendations of the Anomaly Committee constituted by the Board for implementation of the recommendations of the</td>
</tr>
</tbody>
</table>
Thus NFSG was conditional on scale of pay being enhanced to 16400-20000. In 1999 the Board only had powers to create posts upto 14300-18300. Further in 2000 the Government of India Ministry of Labour and Employment (Ministry) rejected the recommendations of enhancing pay scale to 16400-20000 as being in violation of Para 22A of EPF Scheme, 1952. With this rejection the NFSG also got rejected as DoPT prescribed that non functional posts cannot co-exist with functional posts.

Para-2: In the EPFO the various posts of Group 'A' Non Ministerial cadre as on 31.03.2014 are operational (Annex V).

5th CPC in EPFO. It is to be appreciated that in accordance with the provision of Section 5D(7) (a) of the Act, the Central Board (EPF) is competent to determine the service conditions of the officers and staff and in accordance with the rules and orders as applicable to the officers and staff of the Central Government drawing corresponding scales of pay. In case, the Board is of the opinion that is necessary to make a departure from the said rules or orders, it shall obtain prior approval of the Central Government. Accordingly, the grant of NFSG to the officers of EPFO, has been implemented after receiving the express approval of the Government and according to Section 5D (3) read with Para 22A of 1952 Scheme the Board has power to appoint officers upto the level of Joint Secretary to Govt. of India. It is incorrect to say that the grant of NFSG was conditional on the scale of pay being enhanced from Rs. 14300-18300/- to Rs. 16400-20,000/- to the post of Addl. CPFC as there was no such recommendations of the Anomaly Committee. As the provision of Para 22(A) of EPF Scheme 1952 is concerned on the date of approval the Central Board had possess to make appointment to the posts having pay scale of Rs. 14300-18300/-. The Board had implemented the higher scale of pay for the post of Addl. CPFC but the same was not accepted by the Central Government only for the reason that it required amendment of the Scheme which was within the purview of the Central Government. The grant of NFSG in the Pay scale of Rs. 14300-18300/- in the cadre of RPFC-I was within the powers of the Board and it was a separate recommendations by adopting the Scheme framed by the DoP&T, Govt. of India which was in vogue for other Group-'A' Central Services. Since the acceptance of the recommendations of the 4th CPC, the said Scheme has been implemented in other Group-'A' services w.e.f. 01.04.1996 but in EPFO the same has been recommended w.e.f. 30.01.2006 after receipt of the approval from the Ministry of Labour & Employment, Govt. of India vide sanction order No. A-11013/1/2004.SS.I dated 30.01.2016.
Para-3: Further after a gap of five years the EPFO vide its letter dated 01.01.2004 requested Ministry to approve grant of NFSG of Rs. 14300-18300 in the cadre of Commissioner in EPFO. Subsequently, Ministry vide its letter dated 30.01.2006 conveyed its approval to the grant of NFSG in Commissioner's cadre in EPFO. Further 29 posts were to be operated in the NFSG of Rs. 14300-18300 with immediate effect. Subsequent to the approval of the Ministry, EPFO granted NFSG in the pay scale of Rs. 14300-18300 to 25 RPFC Gr.I Officers.

The para is factual and states the correct position. However, an important fact that has been missed in the said Audit Para is hereby clarified. The EPFO had been corresponding with the Ministry of Labour & Employment on the question of amendment Para 22A of the Scheme so that it gets amended to meet the administrative requirement of the Organisation to remove the existing anomalies in the Scale of Pay of posts in senior position in the Commissioner cadre.

After considering the proposal, the Ministry of Labour & Employment had written to EPFO vide letter No. A-11013/1/2004-SS.I dated 05.10.2005 vide which it was communicated that the said proposal was referred to the Integrated Finance Division (IFD) which had made 05 (Five) observations on the proposal and it was directed that the issues raised by IFD may be clarified and proposal examined accordingly.

It may be seen from the above that the proposal for grant of NFSG to the cadre of RPFC-I had been referred to the Integrated Finance Division (IFD) in the Ministry and their observations were communicated thereon to EPFO. The EPFO had sent a detailed reply to the observations vide letter No. HRD/4(4)/2001/1/443 dated 23.11.2005. On consideration of this detailed reply, the Government had communicated the sanction of Hon'ble LEM/Chairman, CBT. A copy of the MoL&E letter dated 05.10.2005 and EPFO letter dated 23.11.2005 are enclosed at Annexure-I & II respectively.
In response to the EPFO letter dated 23.11.2005 the EPFO has been conveyed the sanction of the Government for operating NFSG in the Commissioner's cadre with approval of Hon'ble Minister for Labour & Employment/Chairman, CBT, EPF and that 29 posts of RPFC-I in EPFO shall be operated in NFSG in the scale of Rs. 14300-16300/- with immediate effect. It was further directed that necessary action may be taken immediately under intimation to the Ministry.

Para-4: On 11.01.2007 the Ministry turned down the proposal of EPFO regarding grant of NFSG in EPFO w.e.f. 13.08.1999. EPFO vide its letter dated 07.03.2007, 27.06.2007 and 18.08.2007 requested for grant of NFSG w.e.f. 13.08.1999. The Ministry vide its letter dated 24.11.2009 again rejected the proposal of EPFO. Further EPFO granted NFSG in PB-4 (Rs. 37400-67000+Rs. 8700 GP) to another 22 officers vide its Order dated 03.10.2010.

The para does not indicate the correct position. The MoL&E had turned down the proposal of EPFO regarding grant of NFSG w.e.f. 13.08.1999 i.e. the date on which the Executive Committee of Central Board had approved the Agenda for grant of NFSG initially. The said rejection had no implication on the existing Scheme of NFSG which was in operation w.e.f. 30.01.2006 and the Screening Committee held for grant of NFSG subsequent to the receipt of the sanction.

Para-5: Subsequently, the Ministry vide its letter dated 29.08.2011 acceded to the request of EPFO to implement the grant of NFSG w.e.f. 13.08.1999 i.e. the date of approval by the Executive Committee, CBT, EPFO. In pursuance of Ministry's decision EPFO vide its letter dated 02.01.2012 and 23.08.2013 granted NFSG to 127 and 19 officers.

The Para does not indicate the correction position. The Ministry of Labour & Employment acceded to the request of the EPFO to implement the grant of NFSG w.e.f. 13.08.1999 consequent to the order passed by the Hon'ble High Court of Punjab & Haryana in Civil Writ Petition No. 8438/2011 filed by the EPFO wherein Hon'ble High Court has dismissed the Writ Petition as devoid of merits and had upheld the order of the Hon'ble CAT as wholly within the parameters of Section 5 D (7) of the EPF and MP Act, 1952. The judgement of the Hon'ble High Court was further examined in the Ministry of Labour & Employment and had communicated vide their letter dated 29.08.2011 that the matter was referred to Additional Solicitor General of India who had opined that the approach of Hon'ble High Court is justified and reasonable and it was not a fit case for filing SLP. Therefore, the Ministry had communicated that the NFSG may
Para-6: Audit contention is that the grant of NFSG in EPFO is irregular in view of the fact that Central Civil Services Group 'A' where the scale of Rs. 14300-18300 exists as a part of the cadre structure on functional basis will not be eligible to have non functional selection grade unless the cadre controlling authority decides to do away with the functional selection grade. In EPFO five functional posts of FA & CAO, Addl. CPFC-II, Chief Vigilance Officer, Director (Vigilance) exist which have a total sanctioned strength of nine.

The provisions of Section 5D(7) of EPF & MP Act, 1952 are very clear and unambiguous in administrative and legal parlance. The provisions of the Act shall always prevail over the executive instructions. Under the powers conferred by Section 5D of the Act, the Central Board of Trustees is competent to determine the service conditions of the officers and staff and in accordance with the rules and orders as applicable to the officers and staff of the Central Government drawing corresponding scales of pay. In case, the Board is of the opinion that it is necessary to make a departure from the said rules or orders, it shall obtained prior approval of the Central Government. Accordingly the grant of NFSG to the officers of EPFO, has been implemented after receiving the express approval of the Government.

With regard to the observation that the basic feature of Non Functional Selection Grade in Group A Central Services, functional and non functional both posts cannot co-exist and 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, it is stated that this is an instance of deviation, which has been examined by the Central Government, when the proposal was sent for consideration to Central Government after the approval of Central Board of Trustees, EPF. Central Government has approved the grant of NFSG vide its letter dated 30.01.2006 conveying the approval of LEM/Chairman, CBT. The five functional posts cited except the post of Addl. CPFC-II, the other posts are not in the line of promotion in the Commissioner Cadre and do not fall in the channel of reporting.

Para-7: Secondly the pay commission had also stipulated that the officers to be placed in the selection grade should have reached the maximum of the Junior Administrative Scale.

The Para is not depicting the correct Rule position on the residency period. The condition regarding residency of two years in the JAG Scale (contained in O.M No. 5/12/79-PP-II dated 13.08.1999).
Crede and have remained there for two years. In EPFO the eligibility to NFSG is being granted to RPFC Gr.I in the corresponding JAG pay scale of Rs. 15600-39100+G.P. of 7600/- irrespective of their period of service in RPFC Gr.I. Out of 22 officers who had been granted NFSG during the period 13.08.1999 to 01.08.2013 it was noticed that six officers were granted NFSG w.e.f. the date of promotion as RPFC-I. In respect of 11 officers, NFSG was granted between periods ranging from 2.5 months to nearly 03 years after their promotion to the post of RPFC-I.

Para-8: EPFO stated that NFSG was given after orders of the Hon’ble CAT, Chandigarh Bench on 25.02.2011 and same was reiterated by the Divisional Bench In High Court of Punjab and Haryana. But the judgment says that if Board has taken a decision in accordance with the Rules (Para 7(a) and 7(b) of the Employees Provident Fund and Miscellaneous Provisions, Act 1952) and orders applicable to the officers and employees of the Central Government only then Government cannot interfered in it. The decision of the Central Board to grant NFSG to the officers of EPFO without doing away with the Functional Selection Grade is contrary to the instructions of DOPT and also not in accordance with the judgment of the Punjab and Haryana High Court.

Para-9: Due to irregular grant of NFSG to 22 officers (Annex IV) at EPFO Headquarters an amount of Rs. 1.31 crore was paid from 31.07.1982) has already been removed by DoPT O.M No. 19/1/1986-PP dated 14.08.1987. Therefore, the calculation of the residency period is not relevant and not part of NFSG Scheme after 14.08.1997. The NFSG Scheme has been implemented in EPFO w.e.f. 30.01.2006 after receipt of the approval from the MOL & E.

The Para does not depict the correct position with regard to the order passed by the Hon’ble High Court of Punjab & Haryana. Hon’ble High Court of Punjab & Haryana vide its order, dated 22.05.2011 has upheld the order of the Hon’ble CAT Chandigarh Bench dated 25.02.2011. It has agreed with the findings of the Hon’ble CAT wherein the CAT has examined the provision of Section 5 D 7(a) and 5 D 7 (b) and has held that the Central Board of Trustees is the final authority to determine the service conditions of the Commissioners. The Central Government would necessarily come in where the Central Board is of the opinion that it is necessary to make a departure from the said Rules or orders in any of the matters laid down in Section 5 D 7(a) & (b). The other point decided by the CAT was the date of implementation of NFSG for the Commissioner Cadre in EPFO. The Hon’ble CAT had given a separate finding on the date of its implementation on which it held that since the proposal was approved by the Central Board on 13.08.1999, the same should be implemented from that date. It is for this reason that the NFSG was reviewed and the officers who were eligible on or after 13.08.1999 were also granted the benefit of NFSG.

The Para does not depict the correct position as there is no irregularity in the adoption of the Scheme as well as its implementation. The
the date of grant of NFSG till December 2014 date of retirement/date of promotion to the post of ACC: In excess of the admissible pay and allowances. The Information relating to field offices has been called for for and is awaited. EPFO may issue instructions to their branch offices to review similar cases and put the excess payment.

Para-10: The above irregularity was brought to the notice of the authorities of EPFO vide inspection report of 2013-2014 but no action has been taken by the organization 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 21.02.2018 and 46 dated 21.02.2018 requisitioning relates files, records and reply of the above SOF were issued. Reminder III dated 21.02.2018 and Reminder IV dated 26.02.2018 were also issued to follow up the memos but no reply was received till the close of audit.

Scheme of NFSG has the approval of the Government of India communicated vide its letter dated 30.01.2006. The Ministry of Labour & Employment vide its letter dated 30.01.2006 has conveyed the approval of Hon'ble LEM/Chairman, CBT(EPI) after concurrence of Internal Finance Division (IFD) as required under the rules and procedure to operate 29 posts in the RPFC-I in EPFO in the Non-Functional Selection Grade of Rs. 14,300-18,300 with immediate effect. The NFSG has been granted to the officers who are eligible as per the Scheme and by following the proper procedure The placement in RPFC-I(NFSG) grade is made to the extent the slots are vacant and after examining the fitness of the officer who are meeting the eligibility conditions subject to their Vigilance clearance. It may be further stated that as per the approved Cadre restructuring recommendations, the functional grade of Addl. CPFC-II in the Pay Band-4 with grade pay of Rs.8700 has been removed as it stands merged in the higher post of Addl. CPFC in Pay Band-4 with Grade pay of Rs. 9800 w.e.f. 27.12.2015. Consequent to the approval of the recommendations of the Organizational & Cadre restructuring report by the Ministry of Finance as well as Ministry of Labour & Employment, the EPFO has issued the revised sanction of posts vide Office Order No. HRM-I/D-1(1)2017/CR/26417 dated 13.01.2017.

As per the above submissions, there is no irregularly on the part of the EPFO as it had received a valid sanction order from the Government vide sanction order dated 30.01.2006 to implement the NFSG in the cadre of RPFC-I and to operate 29 posts. The EPFO has provided all the records and replies to the audit observations made in Para-1 of Part-II(A) Audit Report for the year 2013-14. Consequent to the framing of the audit para by the DGACR; a reply also sent to Deputy DGACR vide D.O. letter No. HRM-I/Misc./RC-I/2010/15281 dated 12.09.2016 followed by reminder dated 01.12.2016 to consider the reply of the Organisation with a request to drop the said audit para. The O/o DGACR had given a reply that the said reply to the audit para may be provided to the Inspecting
Para-11: Further Audit Memo No. 48 dated 22.02.2018 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 13.08.1999 till date along with the details of amount paid.

Team during their subsequent audit alongwith relevant records and thereafter the matter will be considered. During their subsequent visit to EPFO Headquarters, the Inspecting Team was provided a brief reply alongwith the relevant records and a discussion was also held with the Inspecting Team on 23.03.2017 in the presence of Director (AMG-IV), DGACR.

(i) The Inspecting Team had then raised Audit Memo No. 30 dated 03.03.2017 and a reply was given to the Inspecting Officer on 10.03.2017. A copy of the Memo No. 30 as well as reply to audit Memo is enclosed at Annexure-III. Subsequently, while concluding the audit, the Inspecting Team raised another Special Audit Memo No. 1 dated 10.03.2017 raising fresh observation as follows:

(a) As per the basic feature of Non-Functional Selection Grade (NFSG) in Group A Central Services, functional and non-functional both posts cannot co-exist and 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. Scrutiny revealed that at the time of implementation of NFSG, there exists functional grade scale of Rs. 14300-18300/-. It may be informed that whether any decision in respect of doing away the existing functional grade scale of Rs. 14300-18300 has been taken by the controlling authority. If yes, a copy of the same may be provided to audit urgently.

(b) Action taken by the authority in respect of the recovery of payment in excess of pays and allowances due to irregular grant of NFSG from the concerned officials may also intimate to audit.

[10]
(c) Details of officers who had been granted NFSG during the period 13.08.99 till date along with the detail of amount paid may also be furnished to audit urgently.

(ii) A further reply was handed over to the Inspecting Officer to Special Audit Memo No. 1 vide Note dated 15.03.2017. A copy of the Special Audit Memo No. 1 as well as the reply is placed at Annexure-IV.

It may be seen from the above that the Audit Memo No. 48 dated 22.02.2018 is nothing but the contents of Special Audit Memo No. 1 dated 10.03.2017 for which the reply was handed over to the Inspecting Officer of the Inspecting Team on 15.03.2017. Therefore, it will not be correct to say that the said audit para was not replied by the EPFO.

The decision in respect of doing away the existing functional grade scale of Rs. 14300-18300 has been taken by the competent authority with effect from 27.12.2016, vide office order No. HRM-I/D(1)2017/CR/26417 dated 13.01.2017 (copy enclosed) after getting due approval of Ministry of Labour & Employment as well as Ministry of Finance, Government of India in the light of Cadre and Organization Restructuring.

Para-13: In this regard half margin No. 9 was issued on 27.02.2018 but no reply was received till the close of audit.

It is further stated that the Recruitment Rules for the post of Addl. CPFC in the Level-13A of Pay Matrix, PB-4 in Grade Pay of Rs. 8900 have been notified vide HRD/5261/RR Commission Cadre/1613/2018 and all the existing II have been placed in the revised Addl. CPFC vide Office Order dated 06.04.2018.

2. The reply of the Department to the above observations of the audit is for consideration of the DGACR with a request to drop the para as the NFSG Scheme has been implemented following EPFO in the cadre of RPFC-I with the due approval of the Government and after prescribed eligibility conditions and the bench marks as specified by the Deptt. of P&G, GOI.
No. A-31022/10/2014-SS-1
Government of India
Ministry of Labour & Employment
Shram Shakti Bhawan, Rafi Marg, New Delhi,

Dated the 27th December, 2016

To

The Central Provident Fund Commissioner
Employees' Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
Bhilai Cama Place,
New Delhi

Subject: Organisational and Cadre Restructuring in EPFO- approval reg.

Sir,


2. The proposal of Organisational 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 Fund Commissioner-II shall be 299.
   iv. The revised sanctioned strength of Assistant Provident Fund Commissioner shall be 452.

3. As regards the post of Additional Central Provident Fund Commissioner in the Grade pay of Rs. 10000/-, the total number of 13 posts (4 existing + 9 newly created) also includes posts to be filled on deputation basis which will be 4 in number.
4. The expenditure to the proposed Organizational and Cadre Restructuring in EPFO shall be met entirely from the internal budgetary resources of the Employees' Provident Fund Organization.

5. The proposal of Organizational and Cadre Restructuring in EPFO has the approval of the Hon'ble Minister for Labour and Employment.

6. This issue vide Finance II Dy.No.70507 dated 22-12-2016.

Yours faithfully,

[Signature]

(Navil Kapur)
Under Secretary to the Government of India
Telephone:23766938
Department of Personnel & Training
Establishment (D)

FTS No. 89927/2018
F. no.A.12018/1/2018-SS.I of Ministry of Labour & Employment

Reference preceding notes.

2. Ministry of Labour & Employment vide ID note dated 12.2.2018 has sought the advice of this Department regarding grant of NFSG to the Regional Provident Fund Commissioner Grade I in the Commissioner Cadre in the EPFO at par with the organized Group 'A' Central Services.

3. It may be mentioned that OM no. 22/1/2000-CRD dated 6.6.2000, on the subject, 'Grant of Non-Functional Selection Grade to the organized Group 'A' Central Services – increase in percentage ceiling' provides as under:

Pursuant to the recommendations of the Fourth Central Pay Commission, the Non-Functional Selection Grade (NFSG) has been granted in all organized Group 'A' Central Services...

4. It has been stated by the administrative Ministry that Commissioner Cadre or any other Cadre in EPFO does not fall under Organized Group 'A' Central Services.

5. As stated in 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 30.1.2018 [P.8/N] 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 suo moto applicable on autonomous bodies.

6. It is proposed that with the aforesaid observations, the proposal may be returned to the administrative Ministry.

Joint Secretary (GJ)

February 13, 2018

(Rajesh Sharma)
Dy. No.1334951/2018
F. no.A-12018/2/2018-SS-I of Ministry of Labour & Employment

Reference preceding notes.

2. This Division has no comments to offer in the matter. It is proposed that the comments provided earlier vide ID note dated 21.02.2018 [P.11-12/N] may be reiterated. However, CRD Division may also be consulted in the matter as the instructions on the subject have been issued by it.

(Rajesh Sharma)
October 4, 2018

Joint Secretary (GJ)

J.S.

[Signature]

P. Consult CRD before finalising the stand.
EPFO is under statutory obligation to extend the service conditions similar to those applicable to other Government servants to their employees. The revised has been communicated to the AHM.

Under Secretary (CRD)

[Signature]
Sub: Grant of Non-Functional Selection Grade (NFSG) in case of EPFO (Employee’s Provident Fund Organisation)

Reference copy on previous page:

This is regarding grant of NFSG to the Regional Provident Commissioner Grade I in the Commissioner in the EPFO at par with Organised Group ‘A’ Central Services.

2. On 13th February, 2018, the Estt. (D) Division while examining the issue referred by M/o Labour & Employment conveyed that the OM dated 6/6/2000 on grant of NFSG is applicable for the Organised Group ‘A’ Central Services and the Commissioner cadre or any other cadre in EPFO does not fall under Organised Group ‘A’ Central Services. The instructions issued by this Department are not suo moto applicable on autonomous bodies. (p. 11/N)

3. The matter was then internally examined by the M/o Labour & Employment. M/o Labour & Employment has now moved a proposal for consideration of Deptt. of Expenditure and sought view of DOPT:

(i) To grant NFSG in Level 13 to the Regional Provident Fund Commissioner, Grade-I in EPFO who have entered the 14th year of Service as on the 1st January of the year calculated from the year of selection on the basis of which the officer was appointed or recruited to group ‘A’ post in EPFO.

(ii) Restrict it to 30% of Senior duty posts in the cadre (i.e. posts in Pay Bands with Grade Pay of Rs. 6600 and above) as directed by the Hon’ble LEM vide notes at page 3/N, which works out to 174.

(iii) There will be no increase in the overall strength of the cadre and the number of posts to be operated in the NFSG shall not exceed the number of posts available in RPFC-I.

(iv) NFSG to be made effective from prospective date only.

(v) There will be no financial implication on the Government of India. (p. 34-37/Note ante)

4. The proposal has been referred to DOPT for advice and Estt. Division has now desired comments of this Division. Remarks of JS (E) in the matter are as under:

"Pl. Consult CRD before firming up stand."
EPFO is under statutory obligation to extend the service conditions similar to those applicable to Central Government servants to their employees. The responsibility has been cast on the AM.” (p. 38/N)

5. The matter has been examined accordingly and the observations of this Division are as under:

(i) The details provided by M/ L&E at Note p. 35/ante provide that “as per sub-section (7) of Section 5D of the EMP, PF, AND MISC. PROV. ACT, 1952 the method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employee 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.”

As such, EPFO is required to extend the service conditions similar to those applicable to Central Government servants to their employees.

(ii) The note of M/o L&E does not provide any comments on the observation of the Estt. (D) provided on 13th February, 2018, that ‘the OM dated 6/6/2000 on grant of NFSG is applicable for the Organised Group ‘A’ Central Services and the Commissioner cadre or any other cadre in EPFO does not fall under Organised Group ‘A’ Central Services’. However, the Note of the M/o L&E referred to the DoPT provides that the proposal has been moved as departure from the Government rules (Para 12 of the Note on p. 36/N). In such cases, as per the above said provisions of the Act, prior approval of the Central Govt. is required.

(iii) It has been observed that the issue of ‘NFSG’ and ‘organised service’ have not been properly examined by the M/o L&E before moving
the proposal to DOPT. By OM No. 5/12/79-PP-II dated 31st July 1982, the scheme of NFSG was introduced in Organized Central Group ‘A’ services and there was a condition that the cadre has to do away with the functional selection grade and opt in favour of a non-functional selection grade. By OM No. 19/1/86-PP dated 14th August 1987, a ceiling of 15% (of the senior Duty post) for NFSG was imposed with certain provisions. Vide OM No. 22/3/90-CRD dated 16th July, 1990 it was clarified that apart from other factors, the orders of NFSG intended to be applicable to such of the Central Group ‘A’ Services/ Cadres as have an element of direct recruitment of 50% or above at the level of Junior Time Scale posts. Vide the same OM dated 16th July, 1990 the orders for introduction of NFSG were also made applicable to Central Police Organization on completion of 16 years of Group ‘A’ Service after the cadre review exercises conducted by this Ministry. Vide OM dated 6th June, 2000, the ceiling of NFSG was extended to 30% for the Organised Group ‘A’ Services and thus the other Central Group ‘A’ Services (other than Organised Group ‘A’) remain with the ceiling of 15% only. Unlike other central Group ‘A’ Service where level 13 is non functional, in Central Group ‘A’ Engineering service, the JAG scale (level 13) is functional and Level 12 is Non Functional.

From the above, it is evident that the NFSG Scheme issued by the DOPT under the OMs of this Division is not applied for all the Services/cadres and even in Central Group ‘A’ Services where it is applicable, the same is operated differently and also with certain conditions.

(iv) Regarding the organised status, it is pertinent to mention that all the Central Group ‘A’ Services are not organised services. There is established procedure to grant 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 this Division on 19/20.11.2009. 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. The cadre in question is neither recognised as Central Group ‘A’ Service nor as organised Group ‘A’ Service.

(v) The Note of M/o L&E may kindly be referred (p. 34-36/Note ante). The same states the proposal as, "grant of NFSG to the Regional
Provident Fund Commissioner Grade I in the Commissioner cadre in the EPFO on par with the Organised Group ‘A’ Central Services” (para 1 of the Note on p. 34/ante). There are various benefits especially granted to the Organised Services, like 30% NFSG, NFU etc. Seeking extension of 30% NFSG on par with Organised Service may have wide ramifications. It is noteworthy to mention that para 7 of the Note of M/c L&E also mentions the term “NFU” along with grant of NFSG. In this regard it is pertinent to mention that various court cases including that of RPF and CAPFs are pending regarding Organised service status and consequential benefit of NFU.

6. In view of the above, this Division is of the view that 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 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 Govt. 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 Organised Group ‘A’ Service and impact of the proposal as detailed in para 5 above.

7. The file may be returned to Estt. (D) Division with the above comments.

[Signatures and dates]
Dy. No.1334951/2018  
F.no.A-12018/2/2018-SS-I of Ministry of Labour & Employment

Reference preceding notes.

2. Ministry of Labour & Employment vide ID note dated 28.09.2018 has sought the advice of this Department regarding grant of NFSG to the Regional Provident Fund Commissioner Grade I in the Commissioner Cadre in the EPFO at par with the organized Group 'A' Central Service.

3. The same matter was also referred earlier by the administrative Ministry vide ID note dated 17.2.2018 [P.10/N]. The same was examined and with the approval of the Competent Authority the following was conveyed:

the instructions issued vide OM dated 6.5.2000 are applicable on organized Group 'A' Central Services. Further, the administrative Ministry in paragraph 2 of the note dated 30.1.2018 [P.8/N] 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 suo moto applicable on autonomous bodies.

4. In view of above, in the present proposal this Division has proposed that it has no comments to offer in the matter and the comments provided earlier vide ID note dated 21.02.2018 [P.11-12/N] may be reiterated. However, CRD Division may also be consulted in the matter as the instructions on the subject have been issued by it.

5. The CRD Division advice may be seen at P.39-42/N.

6. It is proposed that the comments as mentioned in paragraph 6 at P.42/N may be conveyed to the administrative Ministry.


Joint Secretary (GJ)

Jayanthi

Please prepare a self contained note stating the non applicability of OM dated 2018 on employees of autonomous organization. The statutory provision of PF ref decision arrived at by CRD in para 6.
Department of Personnel & Training
Establishment (D)

Dy. No. 1334951/2018
F. no.A.12018/1/2018-SS.I of Ministry of Labour & Employment

Reference preceding notes.

2. Ministry of Labour & Employment vide ID note dated 12.2.2018 had sought the advice of this Department regarding grant of NFSG to the Regional Provident Fund Commissioner Grade I in the Commissioner Cadre in the EPFO at par with the organized Group 'A' Central Services.

3. It was observed that OM no. 22/1/2000-CRD dated 6.6.2000, on the subject, 'Grant of Non-Functional Selection Grade to the organized Group 'A' Central Services - increase in percentage ceiling' provides as under:

**Pursuant to the recommendations of the Fourth Central Pay Commission, the Non-Functional Selection Grade (NFSG) has been granted in all organized Group 'A' Central Services ...**

4. It had been stated by the administrative Ministry that Commissioner Cadre or any other Cadre in EPFO does not fall under Organized Group 'A' Central Services.

5. As stated in 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 30.1.2018 [P.8/N] 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 suo moto applicable on autonomous bodies.

6. Accordingly, with the approval of the Competent Authority, the proposal was returned to the administrative Ministry with the aforesaid observations.

7. The administrative Ministry has resubmitted the proposal vide ID note dated 28.09.2010, by stating that:

(i) As per sub-section (7) of Section 5D of the said Act [P.415/C], 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 officer 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.

(ii) Ministry of Finance (MoF) has stated that the proposal of the M/o Labour & Employment regarding cadre restructuring in EPFO may be finalized at the Ministry’s own end with the approval of the M/o Labour & Employment. It is clarified that the approval conveyed vide letter dated 27.12.2016 annexing the note sheet containing approval of MoF, includes only approval for creation of posts and not the eligibility criteria for appointment to such posts including grant of NFSG, NFU and inclusion of Initial Fitment Clause, etc.

(iii) All the expenses of the Central Board are met from administrative and inspection charges under the Employees Provident Fund Scheme, 1952 and Employees Deposit Linked Insurance Scheme, 1976. Government of India does not release any fund for establishment related expenditure of the Central Board, EPF.

(iv) With regard to financial implication involved in grant of NFSG to Officers of RPFC-I in the Commissioner Cadre of EPFO, this has not been worked out. However, there will be no financial implication on the Government.

8. The matter was also referred to the CRD Division for its comments. CRD Division vide note dated 16.10.2018 has stated that:

(a) it is evident that the NFSG Scheme issued by the DoPT [CRD Division] is not applied for all the Services / cadres and even in Central Government Group ‘A’ Services where it is applicable, the same is operated differently and also with certain conditions.

(b) Regarding the organized status, it is pertinent to mention that all the Central Group ‘A’ Services are not organized services. There is established procedure to grant organized 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 Organized Group ‘A’ Central Services issued by CRD Division on 19/20.11.2009. Even after complying with the said attributes no service would be considered as Organized Service unless it has been declared as such through the Established procedure. The cadre in question is neither recognized as Central Group ‘A’ Service nor as organized Group ‘A’ Services.
CRD is of the view that 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 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.

9. In view of above, it is proposed that the comments of CRD Division, as contained in paragraph 6 at P.42/N may be conveyed to it.

(Rajesh Sharma)
November 29, 2018

Joint Secretary (GJ)

[Signature]

[Signature]

Under Secretary (SKD), Ministry of Labour & Employment

DRAFT ED No. 1334/51/2016

Dated: 10/2/18

May like to see at desk stage.

Dir (UK)

[Signature]

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[Signature]
Department of Personnel & Training
Establishment (D)

Dy.No.: 1368640/2019/CR
F. No.: A-12018/02/2018-SS-I of M/o Labour & Employment.

Reference – preceding notes.

2. M/o Labour & Employment has sought the advice of this Department on the order dated 08.02.2019 issued by the Hon'ble CAT, Chandigarh in OA No. 060/00126/2019 filed by Sh. Rakesh Kumar and 5 others regarding grant of NFSG to the officers in the Employees' Provident Fund Organisation (EPFO) under the M/o Labour & Employment. The Hon'ble CAT, vide the aforesaid order, has directed the respondent to consider and decide the representations of the applicants for grant of NFSG.

3. In the above context, it is submitted that earlier (in October, 2018) the proposal of the M/o Labour & Employment regarding grant of NFSG to the officers of the rank of Regional Provident Fund Commissioner Grade-I in the Commissioner Cadre in the EPFO at par with the organised Group 'A' Central Service, was referred to this Department for comments/advice. [page 34-36/N]. This Division, after detailed examination of the issue in consultation with CRD Division has furnished the comments of DoP&T to the referring Department, [p.44-46/N].

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.

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.

(R.K. Sinha)
US(Estt-D)
05-07-2019
Department of Personnel & Training
Establishment (D)

Dy.No.: 1392524/2019
F. No.: A-12018/02/2018-SS-I of M/o Labour & Employment.

Reference - preceding notes.

Ministry of Labour & Employment (MoL&E) may refer to their notes on page 66-67/N seeking advice of this Department on the order dated 08.02.2019 issued by the Hon’ble CAT, Chandigarh in OA No. 060/00126/2019 filed by Sh. Rakesh Kumar and 5 others regarding grant of NFSG to the officers in the Employees’ Provident Fund Organisation (EPFO). It has been observed that the Hon’ble CAT, vide the aforesaid order, has directed the respondent to consider and decide the representations of the applicants for grant of NFSG.

2. The matter was referred 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.

(R.K. Sinha)
US(Estt-L)

M/o Labour & Employment [US(SKD)]
DoPT ID Note No. 1392524/2019 dated 15-10-2019
Ministry of Finance  
Department of Expenditure  
E.II(3) Branch  

Refer: Notes at P.72-79/N, Ministry of Labour and Employment’s file No. A 12018/02/2018-SS-I

Ministry of Labour and Employment has forwarded the instant proposal regarding grant of NFSG in the cadre of Regional Provident Fund Commissioner Grade-I (RPFC-I) (GP 7600 pre-revised, Pay matrix Level 12), EPFO in the light of order dt. 08.02.2019 of Hon’ble CAT Chandigarh Bench in O.A no 060/00123/2019 filed by Shri Rakesh Kumar and others.

2. The matter has been examined and it is observed that NFSG in this case of EPFO was allowed by Ministry of Labour and Employment in terms of their letter dated 31.1.2006. 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 25.2.2011 in terms of their letter dated 29.8.2011 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 4.8.17 allowed EPFO that the cases of NFSG may be proposed as per sanctioned strength in cadre restructuring dated 27.12.2012. 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.

3. This has the approval of AS(Pers.).

(A.K. Nandy)  
Under Secretary (E-III-B)

AS&FA, Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi  
M/o Finance, D/o Expenditure UO No. 23(2)/E III(3)/2019 dated 5.12.19
CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

ORIGINAL APPLICATION NO. 060/00126/2019

Chandigarh, this the 8th day of February, 2019

CORAM: HON’BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON’BLE MS. P. GOPINATH, MEMBER (A)

1. Rakesh Kumar s/o Sh. R.S. Panwar aged about 43 years,
R/o 341, Sector 30-A, Chandigarh – 160020.
2. Sunil Kumar Yadav s/o Sh. L.R. Yadav, aged about 47
years, R/o Flat No. 504, Block – C, Jalandhar Heights,
Jalandhar – 144001.
3. Amit Singla s/o Sh. Ram Dass aged about 39 years, R/o
614/17, Panchkula – 134109.
4. Sudarshan Kumar S/o Sh. Basuki Singh aged about 45
years, Regional Commissioner-I, Bhavishya Nichi Bhawan,
Block No. 34, SDA Complex, Kaumphi, Shimla – 171009.
5. Vishwajeet Sagar, S/o Sh. S.L. Sagar, aged about 43 years,
R/o 344, Sector 30 A, Chandigarh – 160020.
6. Dheeraj Gupta s/o Rajendra Prasad Gupta, aged about 44
years, R/o 1031, Sector 21-B, Chandigarh – 160020.

Applicants

(Present: Mr. Kamal Sehgal, Advocate)

Versus

1. Union of India through the Secretary, Ministry of Labour,
Government of India, Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110011.
2. Central Provident Fund Commissioner, Bhavishya Nilhi
Bhawan, 14, Bhikaji Cama Palace, New Delhi-1100066
3. Central Board of Trustee, through its Chairman,
Bhavishya Nilhi Bhawan, 14, Bhikaji Cama Palace, New
Delhi – 110066.

Respondents

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ORDER (Oral)
SANJEEV KAUSHIK, MEMBER (J)

1. MA No. 050/00259/2019 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-5) 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/H.R./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.

(P. GOPINATH)                     (SANJEEV KAUSHIK)
MEMBER (A)                        MEMBER (J)

Dated: 08.02.2019
Reference from note on pre-page:

The Administrative Ministry has referred the file for seeking legal opinion with regard to grant of Non-Functional Selection Grade (NFSG to the Cadre RPFC –I in EPFO) as directed by the CAT vide its order dated 08.02.2019 OA No. 060/00126/2019 in the matter of Rajesh Kumar and Others.

2. Briefly, the applicant who are Grade I officers working in the Employees Provident Fund Organization, seeking issuance of direction from the Hon’ble Court to Union of India and Central Board of Trustee, Bhavishya Nidhi Bhawan, Bhikaji Cama Place to grant them the non-functional selection grade in the pay scale of 37400-67000 with grade pay of Rs.8700 after implementation 6th CPC recommendations from the date of their eligibility with all the consequential benefits and further direction to implement the order dated 30.01.2006 whereby approval was granted for grant of NFSG in the Commissioner's cadre of Employees Provident Fund Organization. It is relevant to mention here that the applicants' claim for obtaining NFSG is based upon the order passed in the case of A. K. Chandok Vs. Union of India & Others OA No.400/HR/2010 decided on 25.02.2011 by the CAT and upheld by the jurisdictional High Court by dismissing the CWP No.8438 of 2011 filed by Union of India against the aforesaid impugned order. After dismissal of the WP the matter was referred to the Ld. ASG, who has also opined that the approach of the Hon'ble High Court is justified and reasonable and it is not fit a case for filing SLP, which means the aforesaid Order has attained the finality.

3. The main grievance of the applicants' is that the representation dated 20.12.2017 and 23.12.2017 for grant of relevant benefit 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 still under consideration as such the representation filed by the applicants' are pending consideration in the office of the respondents and have not been answered till date.

4. The aforesaid OA is disposed of in limine with a direction to the respondent to consider and decide the representation indicated above of the applicants while taking into consideration the ratio laid down in the case of A. K. Chandok, 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 applicants' 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.

5. From the perusal of the file it is seen that 172 officers of EPFO have already been in NFSG up to August 2013. It is relevant to mention here that the order of the CAT in the matter of A.K.Chandok case dated 25.02.2011 was challenged by the Department in the Hon'ble High Court of Punjab and Haryana at Chandigarh which had been dismissed by the Hon'ble High Court in Writ Appeal No. 8438/2011 dated 12.05.2011 observing that "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 Trustee. There is, thus no merit in Writ Petition and the order passed by the Tribunal as wholly within the parameters of Section 5 D(7) of the 1952 Act."

6. It further reveals that NFSG has already been implemented in the Commissioner's cadre with the approval of Ministry of Labour & Employment; by EPFO for implementation on 2 occasions first approval was received at the time of introduction of NFSG vide order dated 30.01.2006 and secondly after the judgment/ order of the Hon'ble CAT as well
as Punjab and Haryana High Court Double Bench dated 12.05.2011.

7. It is also seen from the file that in 2013 DGACR raised an audit on NFSG in EPFO. The basis of audit para was that as per DoPT instructions both functional post of ACC and Non-functional post of RPFC - I (NFSG) cannot co-exist at the pay scale PB-4 GB Rs. 8700/- at same time. Whereas, EPFO has replied to DGACR that NFSG was implemented in EPFO after due approval of the MOLE vide letter dated 30.01.2006, in fact it was in accordance with section 5D (7) of EPF Act, whereby any deviation from Government norms in the service condition of EPF Officers is permissible with the approval of the Central government.

8. It is relevant to mention here that the Central Board of Trustees (CBT) have the powers to appoint officers has been increased from PB-4 GP Rs. 8700/- to posts equivalent to Joint Secretary to Government of India vide Gazette notification dated 20.01.2016. Thereafter as a part of cadre restructuring implemented in EPFO w.e.f. 31.01.2017, the functional post of ACC has been upgraded to PB-4 GP Rs. 8900/- leaving the pay scale of PB -4 BG Rs. 8700/- vacant for NFSG. It further reveals that the DGACR audit para now been modified as with read as follows:

"The Central Board of EPFO vide office order no. HRM-1/D-1 (1)2017/CR/26417 dated 13.01.2017 has been given powers to create post up to the Level of Joint Secretaries, clearing the way for further grant of NFSG in EPFO"

9. During examining the issue it reveals that MOLE has constituted screening committee headed by Secretary, L&E for grant of NFSG to the eligible officers. The matter was referred to the DoPT for examining the issue. The DoPT has opined that the benefits of NFSG for EPFO commissioner is not appropriate as NFSG is not uniformly applicable to all Central Government Employees but is only for organized Group "A" Services.
10. The EPFO officers namely Rakesh Kumar and Ors. have filed OA before the Hon'ble CAT Chandigarh OA No.060/00126/2019 for grant of NFSG. The Hon'ble CAT disposed of the said OA on 08.02.2019 with the direction to respondents to consider and decide the representation of the applicants taking into consideration the ratio laid down in A.K.Chandok case.

11. From the perusal of the file, it is seen that a contempt notice regarding non-compliance of the order-dated 08.02.2019 has been received from the office of the counsel for the applicant dated 16.07.2019 placed in the linked file No. A-12018/02/2018-SS-1 (Pt.) with FTS No. 108572. Considerable time has already been lapsed and the applicants may file Contempt Petition before the CAT for non-compliance of the aforesaid order by the Ministry after this contempt legal notice.

12. In the present case, the Hon'ble CAT vide its order dated 08.02.2019 has issued directions to the MoLE to dispose of the representation of the applicants while taking into consideration of ratio laid down in the case of A K Chandok (supra) which has been affirmed by the jurisdictional High Court also. The Hon'ble CAT further observed that 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 reasoned and speaking order be passed thereon, with a copy to the applicants.

13. In views of the above facts, circumstances and legal position delineated hereinabove, 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.

(R.C. Kathia)
Legal Adviser (L&E)
28.08.2019
MEMORANDUM

BY

E.P.F. OFFICERS' ASSOCIATION

ON

GRANT OF N.F.S.G. TO COMMISSIONER CADRE IN EPFO

06TH FEBRUARY, 2020