

GRANT OF NFSG IN EPFO

A

PRESENTATION BY

EPF OFFICERS' ASSOCIATION

Adoption of NFSG in EPFO

- Executive Committee (EC), CBT, EPF in 24th meeting held on 22.10.1997 adopted the 5th CPC, and constituted a Sub Committee to consider grievances, anomalies, etc.
- Sub Committee :-
 - Observed that Commissioner Cadre meets the attributes of an Organised Group 'A' service of the Central Government.
 - Recommended grant of NFSG posts equal to 15% Senior Duty Posts.

Adoption of NFSG in EPFO – contd.

- Recommendations of Sub Committee (regarding parity with Organised Group 'A' service & NFSG) were examined in EPFO in consultation with Finance Wing, EPFO, and accepted by EC in its 31st meeting held on 13.08.1999.
- After protracted correspondence, MOLE conveyed its approval for implementing NFSG to EPFO w.e.f. 30.01.2006.

AK Chandok case

- *Ratio Decidendi* of CAT, Chandigarh (25.02.2011), upheld by Punjab & Haryana High Court (12.05.2011):-
 - An instance of departure from rules would be only if the CBT recommends a higher grade of pay to a category of employees whose counterparts in the Central Govt. are not enjoying the same.
 - If the CBT was to implement the NFSG, it was not at all obliged to make reference to / obtain prior approval of Central Govt.
 - However, prior approval of Central Govt. was compulsive in case the CBT were to refrain from implementing NFSG while implementing 5th CPC.
 - Even if the matter had been referred to Central Govt., it should have been circumspect enough to return it.

Compliance of AK Chandok

- Govt. referred the matter to LA (L&E) for his advise whether an SLP can be filed in this matter.
- LA (L&E) referred the matter to ASG who opined that the approach of High Court is justified and reasonable, and it is not a fit case for filing SLP.
- Therefore, the MOLE vide letter dated 29.08.2011 directed EPFO to implement :-
 - 15% NFSG w.e.f. 13.08.1999, i.e. date of approval granted by 31st meeting of EC, and further,
 - 30% NFSG from 14.07.2011, i.e. date of approval granted by 72nd meeting of EC (30% NFSG was implemented in Central Govt. w.e.f. 2000)

Parity with I-T deptt. approved in 2011

- To implement 6th CPC, CBT constituted a pay anomaly Committee as per the norm. Committee submitted its report to EC in 2010, which directed that a comprehensive CR proposal be prepared.
- A comprehensive CR proposal was approved in the 72nd meeting of EC on 14.07.2011.
- The proposal *inter alia* included a comprehensive comparative analysis of EPFO vis-à-vis Income Tax Deptt. on the five criteria of the method of recruitment, salary, allowances, discipline & other conditions of service. On basis of the three attributes (as per Sec.5-D(7)) of educational qualifications, method of recruitment, duties & responsibilities, parity between ranks was drawn and the EC accordingly approved parity of EPFO with I-T Deptt.

NFSG also again approved in 2011

- In 2011 while approving CR (which included 30% NFSG in parity with I-T deptt. as per previous slide) a decision was taken by MOLE on whether the NFSG matter needs to be referred to DOP&T or Law Ministry.
- The then AS (L&E) has noted on file that *“In case of NFSG we have no other option but to follow orders of Hon’ble CAT and Punjab and Haryana High Court in the case of AK Chandok. In this case the Courts have held that the matter relating to grant of NFSG lies within the competence of CBT under Section 5D of the Act and the same need not be referred to the Government for approval.”*
- This noting has been approved by the then Hon’ble LEM in the said MOLE file on 29.08.2011.
- Thus again CR along with NFSG was agreed to by the Central Govt.

Audit Issue

- The DGACR, later in 2015, raised an audit para on NFSG in EPFO.
- Audit stated that as per DOP&T instructions both functional post (of ACC) & non-functional post (of RPFC-I (NFSG)) cannot co-exist at the pay scale of PB-4 GP Rs.8700 at the same time.
- Issue was referred by EPFO to MOLE for examination, and pending such clarification, NFSG was continued for officers already availing it, however, it was not granted to further eligible officers.

CR in 2015-17

- In 2015, CBT approved undertaking CR to address above audit issue amongst other issues. As part of CR exercise, CBT constituted a Sub Committee, headed by Shri Heeralal Samariya, the then AS (L&E) with additional charge of CPFC.
- The Sub Committee, in order to address the Audit concerns on NFSG, in Chapter 2 of its report to CBT suggested up-gradation of functional post of ACC to PB-4 GP Rs.8900, leaving the pay scale of PB-4 GP Rs.8700 vacant for NFSG.

Approval of CR proposal by CBT

- The above Sub Committee report was approved by CBT in 212th meeting, and CBT formed an *Anomaly Redressal cum Implementation Committee* comprising of CPFC, JS (SS) and FA&CAO, EPFO (charge held by FA, MOLE).
- Anomaly Committee in para 25 of its report specified the eligibility conditions for officers to be placed in NFSG.
- CBT approved the report of Anomaly Committee in its 213rd meeting held on 08.07.2016, and the CR proposal was referred to MOLE.

Approval of CR proposal by MOLE

- While examining CR proposal, MOLE raised a query on NFSG - *“There is no mention of NFSG grade (PB-4,GP-8700) to be accorded to RPFcs, as available now”* [Pg. No.8 of F.No.A-32022/10/2014-SS-1(Pt.)]
- EPFO replied that same was part of Anomaly Committee Report, this accepted by SS Division, which than forwarded the CR proposal to IFD, MOLE for their concurrence.
- The referred CR proposal included financial implication analysis of NFSG, which had been approved by IFD of EPFO, and later by IFD, MOLE.
- After approval of IFD, the CR proposal, with due approval of Hon’ble LEM, was sent to the DoE, and the same was approved.

CR addressed Audit concern

- MOLE conveyed the approval of CR to EPFO vide letter dated 27.12.2016 with certain modifications which did not include any remark or observation on NFSG.
- After approval of CR proposal, the functional post of Level-13 (pre-revised GP-8700) was upgraded to Level-13A (pre-revised GP-8900). Therefore, the Audit objection on NFSG are no longer valid.

MOLE directs to delink pre & post CR NFSG

- Thereafter, MOLE on directions of Hon'ble LEM communicated to EPFO vide letter dated 07.08.2017 *"...it was decided to delink the cases of NFSG granted prior to Cadre Restructuring from the cases due after cadre restructuring on 27.12.2016 due to audit objection. The cases of NFSG may kindly be processed accordingly as per sanctioned strength in cadre restructuring dated 27.12.2016."*
- Even DGACR has observed that CBT vide office order no. HRM-I/D-1(1)2017/CR/26417 dated 13.01.2017 has upgraded the functional posts of ACC, clearing the way for further grant of NFSG in EPFO.

MOLE Pre-CR NFSG File Missing

- However, as the MOLE file relating to grant of NFSG in EPFO (prior to CR) is missing, it was decided at certain level to start examining the post-CR grant of NFSG instead as that was the only NFSG file available. Even though the issue of NFSG post-CR was already sorted by the CR exercise itself.
- Therefore, a new part file for NFSG was opened by MOLE and same was referred for the first time to DOP&T. DOP&T stated that EPFO being an autonomous organisation, NFSG is not *suo-motu* applicable. This is a valid statement as CBT needs to adopt all Govt. rules prior to their implementation in EPFO.

MOLE Pre-CR NFSG File Missing

- Now the way towards grant of NFSG for post-CR cases was clear, and the MOLE, in order to address the Audit objection, was required to examine only the pre-CR grant of NFSG.
- A meeting was held by Hon'ble LEM with EPFOA wherein it was assured by the then Secy. (L&E) that NFSG for post-CR cases shall be granted immediately upon receipt of DOP&T reply, while pre-CR cases shall be examined by the MOLE in light of audit issue.

Second Referral to DOP&T

- On 04.07.2018, EPFO sent a request to the MOLE to constitute screening committee headed by Secretary (L&E) for grant of NFSG to eligible officers.
- MOLE referred the issue to DOP&T, in a manner as if NFSG was to be granted to EPFO officers afresh / de-novo. The facts regarding AK Chandok case were not brought out before the DOP&T in the referral.
- As a result, DOP&T opined that the benefit of NFSG for EPFO Commissioner cadre is not appropriate as NFSG is not uniformly applicable to all Central Govt. employees but is only for organised Group "A" services.

Case filed in CAT, Chandigarh

- Aggrieved by inaction, EPFO officers filed case for grant of NFSG before CAT, Chandigarh. The CAT on 08.02.2019 directed to consider and decide the representation of the applicants taking into consideration the ratio laid down in AK Chandok case.
- EPFO vide letter dated 08.04.2019 to MOLE clarified that the applicants (and approx. 160 more EPF officers) are similarly placed as the applicant in AK Chandok case and stated that further action in the issue of NFSG lies with the MOLE. It has also asked the MOLE to review its current stand on the matter in view of the AK Chandok case.

Third referral to DOP&T

- MOLE again referred the above orders of CAT to DOP&T, which has replied as below:-

“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 Govt. employees and also have certain pre-conditions for its applicability. Moreover, as per the EPF & MP Act, 1952 provides that the CBT is the competent authority in the matter of determinations of service conditions of its employees. This has also been observed by Hon’ble CAT while delivering aforesaid order dated 25.02.2011.”

- DOP&T also advised MOLE to consult DoLA on CAT case

LA (L&E) observations

- MOLE referred to LA (L&E) who has opined that the applicants claim for NFSG is based on AK Chandok case which has attained finality.
- He advised MOLE to comply with CAT's order dated 08.02.2019 and dispose of the representation of the applicants immediately strictly taking into consideration ratio laid down in AK Chandok case [Page No.61-64 of F.No. A-12018/02/2018-SS-I]

Fourth referral to DOP&T & referral to DoE

- MOLE referred the issue again to DOP&T for the third time, and DOP&T stated *“This department has no further comments to offer in the matter. As such, the file is hereby returned to MOLE”*.
- MOLE thereafter decided to refer the matter to DoE through IFD, MOLE.
- DOE stated *inter alia* that DOP&T is the nodal department on the issue of NFSG and as such, the action advised by DOP&T in terms of para 4 (as mentioned in preceding slide) of their note may be taken.

Concluding Remarks

- DOP&T had initially stated that NFSG is not *suo-motu* applicable in EPFO, and later advised that NFSG is for Organised Group 'A' services, but has also stated that CBT is the competent authority to decide the service conditions of EPFO officers.
- Same has already been upheld by Hon'ble Courts of law and achieved finality.
- DOP&T has also opined that further course of action may be taken in consultation with DoLA.
- LA (L&E) has already clarified that the ratio of AK Chandok case is final and advised to comply by ratio laid down in AK Chandok case.
- DoE has also reiterated DOP&T that CBT is the competent authority to decide the service conditions.

PLEA

It can be seen that NFSG to EPFO officers has been approved by :-

- 1. Executive Committee, CBT
- 2. CBT, EPF
- 3. Chairman, CBT, EPF / Hon'ble LEM.
- 4. Courts of law (Hon'ble High Court & CAT).
- 5. Department of Legal Affairs.
- 6. IFD of EPFO & MOLE.
- 7. Department of Expenditure
- 8. And DOP&T has stated that CBT is the final authority.

All competent authorities have repeatedly held that CBT, EPF is the ultimate authority to decide service conditions of EPF officers and yet it has been denied.

The Committee is therefore requested to favorably consider the request for NFSG & boost the morale of EPF officers.