



EMPLOYEES' PROVIDENT FUND OFFICERS' ASSOCIATION
EMPLOYEES' PROVIDENT FUND ORGANISATION

Ministry of Labour and Employment, Government of India

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Dated: 12.10.2015

To
Shri Shankar Aggarwal, I.A.S.,
Secretary to Government of India/
Vice-Chairman, CBT, EPF/
Chairman, Executive Committee, CBT, EPF,
Ministry of Labour & Employment,
Shram Shakti Bhawan,
New Delhi.

Sub: Continuous attempts to illegally delay Cadre
Restructuring in EPFO - **Satyagraha** by EPF
Officers as a last resort - reg.

Ref: 1. DO letter No. HRD/1(1)2011/Cadre-
Restructuring/445 dated 18.09.2015
addressed by CPFC to Hon'ble Secy. (L&E)

2. DO letter No. CPFC/PS/Misc./2015/448
dated 21.09.2015 addressed by CPFC to
Hon'ble Secy. (L&E)

3. EPF Officers' Association letter dated
14.08.2015 addressed to Hon'ble Secy. (L&E)

Sir,

As you may recall from the above cited letter of
the EPF Officers' Association as well as the meeting held
by your good self with the EPF Officers' delegation on
27.08.2015, we had expressed to you our fear that the

Cadre Restructuring of EPF Officers & Staff is being deliberately delayed by incumbent CPFC by raising unnecessary non-issues and hurdles which have no basis in reason or facts. Unfortunately, our fears now seem to have been realised & confirmed by above cited DO letters addressed by the incumbent CPFC to your good self. These DO letters are blatantly attempting to sideline our legitimate demands for Cadre Restructuring in a pathetically transparent manner. The logic & reasoning in the letters is erroneous on the face of it and if you kindly permit us, we would like to take this opportunity to present a brief critical analysis of the same, as below, for your consideration:

The DO letter dated 18.09.2015 (cited as reference no. 1 above)

- The DO letter's first line itself is erroneous and displays contempt for the directions of Chairman, CBT himself as well as your good self. The DO letter states that the issue of Cadre Restructuring is being raised by "*the non official members of CBT*". It is submitted that the issue of Cadre Restructuring in EPFO has assumed such important and critical dimensions that not only the so-called "*non official members of CBT*" but rather the Chairman, CBT / Hon'ble Minister for Labour & Employment himself had issued repeated written directions to the incumbent CPFC to include Cadre Restructuring in the agenda item for the CBT at Hyderabad. The Hon'ble Minister has now committed to holding a special CBT for Cadre Restructuring during this month vide his press statement released after the last CBT meeting held at Hyderabad on 16.09.2015. The Hon'ble Minister has also constituted a Committee to suggest for Cadre Restructuring for posts within the powers of the CBT. The said Committee, after extensions, has been given a final deadline of 31st October, 2015 for submitting its report by your good self during the 82nd meeting of the Executive Committee. Furthermore, the incumbent CPFC had also himself committed to complete the Cadre Restructuring exercise by January 2015 in the time line for EPFO committed to the Secretary (L&E) last year. Hence, to put in perspective, the Hon'ble Minister, your good self as well as the

incumbent CPFC, all of the above are well aware of the need for immediate Cadre Restructuring in EPFO and there is no legitimate basis for the dismissive tone used by the CPFC in his above mentioned DO letter for the demand for Cadre Restructuring that has been rightly seconded by the Hon'ble CBT members too.

- The point number 2 of the aforementioned DO letter dated 18.09.2015 refers to the Ministry of Finance Note dated 09.10.2012 addressed to the Ministry of Labour & Employment. Therein the incumbent CPFC has declared that he has reached three broad interpretations on reading of the said Note. These interpretations are as follows:
 - (i) The Ministry of Finance has opined in the said Note that it is not the Central Board but rather the Ministry of Labour & Employment in consultation with the FA who have been delegated with the powers to restructure/create/upgrade posts up to the Grade Pay of Rs 8700 under the provisions of the Employees' Provident Fund & Miscellaneous Provisions Act 1952 (EPF Act). *Hence, by corollary, the Central Board cannot even create a single post and that too of any level.*
 - (ii) The advice of the Ministry of Finance vide their Note dated 09.10.2012 prohibits changing of pay scale during the process of Cadre Restructuring (or even otherwise). Hence, whether any change in Fixed Medical Allowance (FMA) will amount to change in pay scale or not.
 - (iii) The Ministry of Finance has very clearly disallowed creation of posts in HAG level in the above mentioned note. And as the Ministry of Labour & Employment has already recommended to the Cabinet Secretariat for the CPFC post to be kept in HAG level, therefore the Labour Ministry may

clarify as to whether it wants HAG scale for EPFO officers or not.

- Now to critically analyse the above interpretations of the Ministry of Finance Note dated 09.10.2012 by the incumbent CPFC in correct perspective, let us first examine the background in which the Ministry of Labour & Employment referred the matter to the Ministry of Finance in 2011, and then analyse the current circumstances in which the incumbent CPFC has not only placed the decisions & actions of all past CPFCs, Secretaries(L&E) & Labour Ministers on their collective heads but also the U-turn that he himself has made after the CBT meeting held on 16.09.2015 at Hyderabad.
- To begin with, it is submitted that the Executive Committee of the CBT in its 72nd meeting held on 14.07.2011, realising the justified & legitimate demand for career progression of EPFO officers, approved an agenda item that proposed creation & up-gradation of various posts in EPFO including creation of an HAG level post in line with Indian Revenue Service (I-T) (as you may be aware this benefit has already been granted to the officers of ESIC). The approved agenda item was then referred to the Ministry of Labour, which in turn referred it to the Ministry of Finance, which replied to the same by issuing the above *interpreted* note dated 09.10.2012. Now, the said approved agenda item of the Executive Committee had called for creating as well as upgrading of posts both above as well as below the Grade Pay of Rs 8700. Hence, it was a grave error on part of the Executive Committee & EPFO to have referred the entire agenda item to the Labour Ministry rather than referring only the part that dealt with posts above the Grade Pay of Rs 8700. This is so

due to following reasons specified clearly in the EPF Act & Scheme:

(a) **Section 5D(3) of the EPF Act which deals with “Appointment of Officers” states that**

*“The Central Board may appoint, subject to the maximum scale of pay, as may be specified in the Scheme, **as many** Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and such other officers and employees **as it may consider necessary** for the efficient administration of the Scheme, the Pension Scheme and the Insurance Scheme”*

(b) **Section 5D(7)(a) of the EPF Act states that**

*“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.***

(c) **Para 22A of the Employees’ Provident Fund Scheme** provides for appointment of officers and employees of the Central Board, and states,

“The power of appointment vested in the Central Board under sub-section (3) of section 5D of the Act shall be exercised by the Board in relation to posts carrying the maximum scale of pay of Rs. [14,300-18,300] [Grade pay Rs.8700 as per 6th pay commission].

- A simple and plain reading of the above Sections & Para make it clear that the Central Board or CBT has absolute statutory powers to appoint as many officers as it deems necessary for efficient administration of the EPF Act, upto the Grade Pay of Rs 8700, provided there is no departure from government rules. There is no scope for any interpretation or opinion left anywhere. The Ministry of Finance clearly stated the same fact in its reply dated 09.10.2012 to the Ministry of Labour & Employment. In fact, the Ministry of Finance, or any other body for that matter, has no power whatsoever to interfere with the CBT's statutory power in this matter except as to where there is any deviation as specified in Section 5D(7) of the EPF Act (as reproduced above for reference). No administrative directions may ever override clearly enunciated statutory provisions.
- The same stand as delineated above has been upheld by the Hon'ble High Court of Punjab & Haryana in the A.K. Chandhok case wherein the Hon'ble High Court has held that the CBT is competent to decide all service related issues up to the Grade Pay of Rs 8700 provided there is no deviation from Government rules. In fact the Hon'ble High Court has stated that such matters even if referred by the CBT to the Ministry should not be interfered with by the Ministry. It has been reliably learnt that the Additional Solicitor General (ASG) has opined to the Ministry of Labour & Employment as to not to challenge the

above judgement before the Hon'ble Supreme Court of India, thus making it legally binding & setting a precedent.

- Furthermore, even the Ministry of Labour & Employment in its recent letter addressed to EPFO, dated 28.09.2015, on the subject of grant of senior time scale to APFCs has stated,

“...that the EPFO, by virtue of Section 5D(7) of the EPF & MP Act, 1952, is competent to take action in the matters relating to method of recruitment, salary and allowances, etc. of its officers upto the Grade Pay Rs 8700/- where there is no departure to existing rules applicable to equivalent central government officers.”

- Now that we have established above that as per the provisions of the EPF Act, EPF Scheme, Ministry of Finance's & Ministry of Labour's clearly expressed views as well as the judgement of Hon'ble High Court of Punjab & Haryana, the CBT is well within its power to create posts up to the Grade Pay of Rs 8700/-, let us examine interpretation number 2 of the incumbent CPFC as delineated in his DO letter dated 18.09.2015 cited above. The incumbent CPFC has opined that the advice of the Ministry of Finance vide their Note dated 09.10.2012 prohibits changing of pay scales during the process of Cadre Restructuring (or even otherwise). Hence, he has expressed doubt as to whether any change in Fixed Medical Allowance (FMA) will amount to change in pay scale or not. In this regard, it is submitted that on the face of it, it so appears that the incumbent CPFC has confused the matter of pay scales with that of allowances. Of course, FMA is a part of allowances and not pay scale, and government routinely increases various allowances such as DA, etc. without any fuss about changing of pay scales. It is indeed a worrying fact that the head of an

organisation that deals with assessment of PF dues on basis of pay scale, allowances, etc. has failed to understand the difference between the two. Here we would again request to draw your kind attention to EPFOA's afore cited letter dated 14.08.2015 addressed to your good self, wherein we had requested that the CPFC should be a domain expert so as to better administrate a highly specialised organisations such as EPFO, otherwise he is bound to make basic errors such as above.

- At this point we would also request your kind attention to the fact that the afore mentioned advise of the Ministry of Finance to not upgrade any post during Cadre Restructuring, while at the same time acknowledging the statutory power of CBT up to the Grade Pay of Rs 8700 is a contradiction in itself. Since CBT has absolute power within its defined jurisdiction, it is for the CBT to decide as to upgrade any post or not, the Finance Ministry has no legal right whatsoever to offer its opinion in the matter, and even if it offers its unsolicited opinion, the CBT is most definitely not bound to accept it. In fact, the Finance Ministry does not even have any moral right to do so as it has itself upgraded the posts in the Income Tax department and the Customs & Central Excise department during their Cadre Restructuring exercise recently. In Cadre restructuring of Income Tax, from existing cadre of Principal Commissioner of Income Tax numbering 116 having pay scale of Rs 67000-79000/- (HAG), 90 posts were upgraded to Scale of Rs. 75500-80000/- (HAG+) (new name Chief Commissioners of Income Tax) and 26 posts of non-existing CCITs were upgraded to new Scale of 80000 fixed (Apex scale). In effect, two new cadres were added of CCITs and Principal Chief Commissioner of Income Tax and 26 persons jumped to Apex grade without entering in

HAG+ cadre. Further, 300 posts of Commissioners of Income Tax bearing Grade of Rs. 10000 in Scale Rs. 37400-67000/- were upgraded in HAG Scale of Rs. 67000-79000/-. Saving citations from Central Customs & Excise, it is sufficient to state that posts were created in that cadre-restructuring.

- Coming back to the incumbent CPFC's third assertion/interpretation, as described above in his DO letter dated 18.09.2015, which deals with creation of HAG level posts within EPFO, here we would like to draw your kind attention to the fact that the Ministry of Finance's advice regarding denial of HAG posts for EPFO officers is arbitrary in nature and in dissonance with the set precedent in all other government services. It is kindly submitted that this issue has already been deliberated upon by the Executive Committee in its 72nd meeting which has accorded IRS (I-T) parity to EPF officers. A statistical profile of Group 'A' services of Non-technical cadre as on 01.01.2015 clearly reflects that the Income Tax has 416 officers in HAG and above cadre out of total 5872 officers and thus HAG and above cadre constitutes 10% of total cadre. As parity with IRS (I-T) has already been approved, this means that accordingly around 100 posts should be in HAG and above cadre. It is no logic that because EPF officers have been deprived-off since long from well deserved career prospects, no opportunity shall be given at all. As evident from the above, no cadre having strength of more than 1000 has less than 3% posts in HAG and above cadre and therefore, at least, 30 posts of EPF officers should be HAG and above cadre.
- The incumbent CPFC has also requested your good self, in afore cited DO letter dated 18.09.2015, to clarify as to whether EPFO is

to talk about organisational restructuring or *just the cadre restructuring of the officers*. It is amply clear from this sentence that once again there is an attempt to divert the sustained pressure and focus that the incumbent CPFC has found himself in by raising non-issues. As you are aware the Hon'ble Minister has formed a Committee for cadre restructuring within the powers of CBT, and that includes cadre restructuring of officers as well as staff. The CPFC himself is a member of said Committee; the report of the Committee is long over-due and your good self have given it a final dead line of 31st October 2015 to submit its report. Now that the dead line is fast approaching the incumbent CPFC is trying to muddy the waters. He is wilfully violating the directions of the Hon'ble Minister as well as your good self. In fact if he is allowed to continue on this course he shall even violate the Hon'ble Minister's direction to conduct Special CBT in October 2015 for Cadre Restructuring in EPFO, which has even received wide press publicity. It is sincerely requested that such blatant disobedience should not be allowed to continue.

The second DO letter cited above, dated 21.09.2015, is also on same lines as the above discussed DO letter dated 18.09.2015, and the incumbent CPFC has stated that he is not empowered to even create Group C & D posts which had earlier been delegated to him by the CBT & EC.

Now that we have discussed in detail the error of logic and the deviation from law in above cited DO letters, I request your kind indulgence to allow me to discuss the current perspective & background of these correspondences as has been understood by us, i.e. EPF Officers.

Sir, as is obvious from the afore cited DO letters, the incumbent CPFC seems to believe that all the posts created within EPFO by the CBT since its inception are

irregular. This despite the fact that some 2911 posts were created by the CBT & EC in last 6-7 years itself for the Grade Pay up to Rs 8700.

Furthermore, the incumbent CPFC himself had approved the agenda items, which were placed before the CBT meeting held on 16.09.2015 at Hyderabad, for cadre restructuring for Stenographers/PA/PS cadre, Information Services Division, Audit Division, Vigilance Division, O.L. Division, Legal Division, Physical Facilities Division and Staff Car Drivers of EPFO. All these posts are well within the Grade Pay of Rs 8700. Hence, it so appears that right up to 16.09.2015, the incumbent CPFC was of the belief & opinion that CBT does indeed have the powers to create/upgrade/restructure posts up to the Grade Pay of Rs 8700, and also had no confusion regarding FMA (which was also included in the CBT agenda item); however, after the 16.09.2015 CBT meeting he appears to have had the revelations as described in his DO letters cited above. The only logic that can be derived from this is that maybe the acrimonious scenes witnessed in the Hyderabad meeting of the CBT have had an unfortunate effect of changing the entire set of laid down & established procedures in EPFO. The inescapable conclusion is that the incumbent CPFC has no regard for rules, statutes or even law, but is rather on a personal vendetta mission against the CBT members and their statutory power. The entire Organisation is being made to suffer in order to settle personal scores.

Sir, this is indeed a very scary scenario where the entire EPFO is being hijacked for ego issues and shows the harmful effects of not completing the cadre restructuring in time. Had there been true second & third rung officers in EPFO, just next in line to CPFC, then he would not have been able to deal with the HR issues of this Organisation in such a capricious manner. It is very important that in order to minimise any further damage to the Organisation the Ministry immediately step-in and take charge.

Sir, it is submitted that if the incumbent CPFC is allowed to continue to willfully violate the mandate of the EPF Act, directions of Cabinet Secretariat to conduct Cadre Review periodically and the repeated directions given by the Hon'ble Minister & your good self (i.e. of both the Chairman & Vice Chairman of CBT), then

it would result in our total loss of faith in the System. It is also humbly submitted that you may kindly appreciate that up till now the EPF Officers have been very patient and have provided ample opportunities to the management to complete the process of Cadre Restructuring. This has been so mostly due to the assurances given in this regard by the Hon'ble Minister as well as your good self. However, if the deadlines given by your good self are also violated by incumbent CPFC, we will lose all faith in the System and shall be forced to rethink our current strategy of co-operation.

It is intimated that the EPF Officers' Association, in wide consultation with the General Body of EPF Officers, has decided to hereinafter end this endless cycle of correspondence whenever the incumbent CPFC decides to next provoke us by writing to your good self, and hereby give notice of our collective intention to proceed with ~~SATYAGRAHA~~ means of protest with effect from the 1st of January, 2016 in support of our demand for immediate Cadre Restructuring in EPFO.

Hence, it is once again requested to fore-go the Ministry's continuing hands-off approach towards HR issues of EPFO and step-in to support our legitimate & just demand so as to avoid any further unpleasantness.

Thanking you.

Yours faithfully,

A. Swami

(Saurabh Swami)
Secretary General