



ASSOCIATION OF SCIENTIFIC & TECHNICAL OFFICERS

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OIL AND NATURAL GAS CORPORATION LTD.

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SANJEEV KUMAR CHATURVEDI
GENERAL SECRETARY-CWC
9426614014

No. ASTO/CWC/EPS-95/2018-20

15th October 2018

To,
CMD
ONGC Ltd.,
NEW DELHI - 110070

Sub: Submission of Report on EPS-95

Sir,

This is with reference to study undertaken by a committee constituted by ASTO CWC. The Committee has submitted its report and as per recommendation of committee and option needs to be given to employee, interested to opt the scheme and management is requested to facilitated exercise of such option by approaching concerned authority in EPFO.

The copy of the report is being enclosed for information and necessary action.

With Regards


(S K Chaturvedi)
Gen.Secretary CWC

Copy to:

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- 5) ED-Chief ER
- 6) President/Secretary - All ASTO Units

Committee report on study of EPS – 95: Statutory limited Salary Vs Actual Salary

I. Committee Formation:

Since there is lot of confusion and apprehensions about EPS – 95 as scheme as well as the option of EPS – 95 pension on actual salary. In order to address the issue and diffuse any misconception on the issue, President CWC ASTO constituted a committee consisting of following CEC members:

1. S S Mayal, President Agartala
2. A K Sinha, President Ankleshwar
3. R Veeramani, Secretary Chennai

The committee has gone through the issue and the report based on the detailed study is presented hereunder.

II. Background:

1. Employees' Provident Fund Organization (EPFO) was constituted by an act of parliament EPF Act 1952. EPFO is responsible to collect, manage and disburse the amount in relation to provident fund in organized sector.
2. Through provisions of the same act some organizations, which were in position to manage a trust for PF of their employees and ensure benefits not less than that by EPFO, were granted exemption. As ONGC had established its own provident fund trust (CPF), hence ONGC became an exempted organization.
3. EPFO introduced "Family Pension Scheme (FPF)" for all PF contributors in 1973, a pension scheme where contribution was being taken from individual member. ONGC was contributing to the same as ONGC was not having its own pension scheme at that time.
4. As pension from FPF was meagre, hence ONGC introduced its own pension scheme called Post Retirement Scheme (PRBS) w.e.f. 01.04.1990 for officers. Further, w.e.f. 15.11.1995 it was made compulsory for all employees.
5. EPFO initiated "Employees' Pension Scheme", EPS – 1995 w.e.f. 15.11.1995. Clause 11 of EPS-1995, determines pensionable salary (basic + DA) and restricts it to the minimum limit of 6500 prevailing at that point of time. Now it has been raised to Rs. 15000
6. However clause 11 (3) of EPS – 1995 stipulates that pensionable salary shall be based on higher salary if the contribution has been made on salary higher than 6500(or 15000now) with the consent of employee and employer, then such higher salary shall be treated as the pensionable salary.
7. Paragraph 26 (6) of EPF Scheme act elaborates about the classes of employees entitled as well as Authority empowered in EPFO, who can approve joining of EPS on higher salary as a consequence of the joint consent of the employee & employer. The relevant paragraph is as under:

Quote:

Notwithstanding anything contained in this paragraph [an officer not below the rank of an Assistant Provident Fund Commissioner] may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enrol such employee as a member or allow him to contribute more than rupees [rupees six thousand and five hundred] of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

Unquote.

8. Since ONGC was having PRBS in vogue, hence exemption was sought from EPS-1995. However it was denied by Ministry of Labor. In response to this ONGC joined the EPS – 95 on minimum salary as per OO no. 1(1)/05/EPS/CP dated 07/09/2005.
9. Similar is the case of most of the exempted organizations and they are contributing on the minimum of the salary.
10. As of date, ONGC is contributing 8.33% of 15000 i.e. Rs. 1250 per month to EPS-1995. Remaining amount is going to individual's CPF.
11. In 2005, few retired employees from state PSUs filed a petition in various high courts claiming that they should be allowed to contribute on actual salary and must get benefit accordingly in EPS-1995. One of suit was decided in favor of pensioners which consisted of employees from exempted as well as non-exempted category.
12. This led to number of other petitions in different courts of country leading to decisions in favor of petitioners in some cases.
13. Keeping the above in consideration, committee decided to deliberate on following aspects:
 1. Compare present system of ONGC(related to EPS-1995 and CPF)with EPS-1995 in case contribution is made on actual salary.
 2. Applicability of EPS-1995 to ONGC employees on actual salary.
 3. Since ONGC is an exempted organization, the way forward for providing an option to ONGC employee to contribute on actual salary in EPS – 1995.
14. Status of various court cases:
 - i. SLP No. 33032 – 33033 of 2015: R. C Gupta & Ors. vs RPFC/EPFO: The case is decided in favor of the appellants and Hon'ble Supreme Court has directed that the appellants be paid pension on actual salary, if contribution is made. Apex court also pronounced that any cut - off date is not applicable in this case.
 - ii. 33 other SLPs related to this issue are pending in Apex Court.

- iii. Judgment in few cases filed in Hon'ble Kerala High court is reserved and awaited for pronouncement.
- iv. Transfer petitions (C) 2302 – 2342 Of 2017, were filed by EPFO for transfer of all cases to Supreme Court and stay on proceedings in all High Courts. Supreme Court refused the same and simultaneously advised other High Courts to wait for outcome of the order passed by High Court of Kerala and only thereafter to proceed further. However by order dated 17.04.2018 Apex court has vacated stay.
- v. There are many petitions filed by retired employees associations and pensioners' associations of exempted organizations which are pending in various High Courts. Few associations of active employees have also filed the cases but are yet to be admitted. For example: WP 26234 of 2017 in Madras High Court, Notice has been issued in October 2017 so far.
- vi. It is also to noted that RPFO Shimla has cancelled pension orders (PPO) of 225 pensioners (from exempted organizations), who were granted pension on higher salary. RPFO Shimla has issued revised PPO on minimum limit of salary as applicable (5000, 6500 and 15000 as the case may be). RPFO has also file a caveat in High Court of Himachal Pradesh.

III. Deliberations

On the basis of above background, status of court cases and other information gathered from different sources, committee deliberated the issues and noted as following:

1. Salient Features of EPS-1995 Scheme:

- 1.1 Presently employees of ONGC, except those who joined on or after 01.09.2014 are member of EPS – 1995 (Scheme) with effect from 16.11.1995 or the date of joining ONGC whichever is later.
- 1.2 Employees are member of EPS – 1995 on the basis of contribution by ONGC on statutory limit of salary revised from time to time. Statutory limit was ₹ 5000 per month from 16.11.1995 to 31.05.2001, ₹ 6500 from 01.06.2001 to 31.08.2014 and ₹ 15000 from 01.09.2014 onwards. ONGC makes a contribution of 8.33% of statutory limit. This is made out of 12% contribution to CPF. This works out as Rs ₹ 417, ₹ 541 and ₹ 1250 per month respectively.
- 1.3 Remaining amount of 12% employer contribution goes to CPF.
- 1.4 By amendment affected in August 2014, EPS – 1995 is not available to the individuals joining services on or after 01.09.2014. However such employees can still become members if their salary (basic plus DA) is less than ₹15000.00 per month at the time of joining.
- 1.5 ONGC is maintaining the account of EPS through EPS section at Dehradun and EPS section coordinates with EPFO as well as facilitates retiring ONGCians in getting pension.
- 1.6 The benefits available to the pensioners on retirement is computed in accordance with the provisions of the scheme. The formulae is as under:

$$\text{Monthly Pension} = \frac{\text{Pensionable Service} \times \text{Pensionable salary}}{100}$$

Here

Pensionable service= service rendered from 16.11.95 till attaining age of 58 years. Eligible pensionable service is computed 6 monthly and if the service is less than 6 months in a year it is rounded to the previous year. If service rendered is more than 20 years then 2 years to be added as bonus i.e. if rendered service is 20 years then pensionable service shall be 22 years.

Pensionable salary = Average salary of 60 months prior to the date of attaining age of 58 years. As on date it is restricted to ₹15000 per month.

One more benefit of extending the contribution till the age of actual superannuation i.e. 60 years is also available. On exercising this option the pension amount is increased by 4% per annum.

- 1.7 Minimum service required is 10 years for eligibility of getting pension under EPS.
 - 1.8 Nominee is eligible for 50% Pension if employee death occurs during the service provided at least one month contribution is made to EPS Fund.
 - 1.9 In case of deceased employee the 50% of pension payable to spouse and 25% of widow pension to two children shall be payable up to attaining the age 25 years.
2. After studying the existing system committee feels prudent to analyze the scheme for a situation where ONGC employees are allowed to join the EPS – 1995 on higher salary (more than the statutory limit) and thereby become entitled for higher pension. The analysis is hereunder:
- 2.1 Contribution to EPS-1995 shall be made by the employer i.e. ONGC from current employer contribution of 12%. Of this 12%, 8.33% shall be diverted to EPS Fund. This means that the present inflow of employer contribution to CPF account (which is 12% of salary - ₹1250) will be reduced to the extent of 8.33% of salary and only 3.67% shall be remitted to CPF. The % shall be calculated on actual salary (basic plus DA) in case employee decides to contribute on actual salary.
 - 2.2 As per the procedure of pension determination the formulae will remain unchanged and the pensionable salary shall be calculated by taking average of 60 months' salary prior to month of retirement.
 - 2.3 In case an employee does not opt for actual salary then pensionable salary shall be calculated taking into consideration statutory limit which presently is ₹15000.
 - 2.4 Since EPS – 1995 is a "defined pension scheme" hence individual shall not have personalized statement as his/her money shall flow to a common corpus. Therefore corpus of individual member is not defined.
 - 2.5 A typical example for comparison in case of present situation and if the same employee opts for EPS-1995 at actual salary:

	Present situation amount in ₹	On Higher/Actual Salary, if allowed amount in ₹
Monthly	1250	8.33% of Salary (basic + DA)

Contribution		considering E4 level average salary 1.50 lakhs = avg. monthly contribution that shall outgo from CPF contribution = 12495
Total Fund deposited	195682	1800514 (this shall be calculated from the date of joining the EPS-1995 and fund from CPF shall be diverted along with interest.)
Pension after 20 years of service in the year 2020 (01.01.2000 to 31.12.2020)	4714	47142
Fund Remaining in CPF (Employee + Employer)	4966152	2659884

In this illustration following assumption are taken:

- a) Individual joins at E1 level on 01.01.2000 and retires On 31.12.2020.
 - b) He got promoted up to level of E4.
 - c) His average salary for 60 months prior to retirement is ₹150000.
 - d) There is no provision for commutation and return of capital under the EPS – 95 scheme.
 - e) In case of death of the pensioner and spouse and children attaining age of 25, the pension benefits will be stopped.
3. Committee also found that serving BPCL employees have approached Hon'ble Madras High Court but with a newly formed association with name "BPCL Pensioners Association".
 4. Few examples for different age groups have been prepared and annexed as Annexure-1-3 for illustration depicting comparison of EPS – 95 benefits under existing limit of salary and the higher/actual salary.
 5. **Viability of scheme:** Committee has gone through various information available in public domain and analyzed in a common beneficiary manner to ascertain the viability of this scheme:
 - a) It is observed that, at present, the liability of the Government of India is limited to 1.16% of the salary or 15000, whichever is less, i.e. maximum ₹174 per employee per month. As such there is no sovereign guarantee.
 - b) As per news reports Hon'ble Minister, MoLE has declared on the floor of the parliament that "funds of one group of employees will not be given to the other group of employees."
 - c) It can be observed that the fund, as calculated above, will be sufficient only for paying the higher pension up to a limited period. The source of funding the pension

benefit beyond such period cannot be ascertained particularly in the light of the statement of the Minister as mentioned in (b) above.


- d) EPS – 1995 is a defined pension scheme (DPS), where pension is not dependent on corpus of the individual. All the pensioners shall draw their pension from a common corpus. It can be seen that one individual can end up drawing more than what he/she has contributed. Such schemes are sustained by younger subsidizing the elder. However employees joining after 01.09.2014 are not eligible for this scheme.

IV. Conclusions:

1. None of the employees, who joined ONGC on or after 01.09.2014 shall be eligible for pension under this scheme.
2. For all eligible employees the scheme may prove to be a bonanza, subject to sustainability of scheme as no actuarial valuation of scheme is available so far.
3. Sovereign guarantee is not available for this scheme.
4. However on the basis of the cash flow illustrated in Annexures and other provisions of the scheme, it can be said that ONGC employees, who have already retired or retiring in 4 – 5 years, the scheme may be beneficial.
5. For employees with remaining service of 8 – 10 years, the gap is very large and policy amendments cannot be predicted and hence the uncertainty will persist.
6. For employees with longer period of service it may not prove to be feasible as the sustainability is at stake, unless benefits are guaranteed.
7. Since there are already many court cases pending on the issue, courts may not accept any new Writ Petition and hence approaching directly may be futile. Also many of the cases have been registered but are yet to be admitted.
8. Employer has to agree to transfer fund from CPF to EPS-1995 for serving employees.

V. Recommendations:

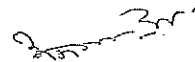
1. Attempts to be made to Join EPS – 95 on higher/actual salary as an option for employees who are interested.
2. Since at present EPFO is not allowing exercising of option under para 11(3), we may approach the court.
3. Management may be requested to facilitate exercise of such option by approaching concerned authorities in EPFO.



(S S Mayal)
President - Agartala



(R Veeramani)
Secretary - Chennai



(A K Sinha)
President - Ankleshwar

Comparison of EPS on minimum and actual salary

DOB: 11.05.1963			DOJ ONGC: 01.04.1986			CPF Corpus as on 31.03.2018 in INR			
DOS: 31.05.2023			DOJ EPS: 16.11.1995			4657746.5			
Projected EPS Contribution on actual salary up to 31.03.2018:						3105164.34			
Residual Corpus of CPF on 31.03.2018 after EPS actual salary contribution						1552582.17			
Year	Basic + DA (Sep 2018)	Projected Basic + DA	Projected CPF ERC	Interest Earned on CPF	Cummulative CPF Corpus	EPS ERC on 15000 Salary	Yearly Residual CPF corpus after EPS on actual salary	Interest on residual CPF	Cummulative residual CPF corpus when EPS opted on actual salary
2018-19	203010	2436120	291084.4	423125.043	5371955.95	204056.267	102028.13	141469.18	1796079.48
2019-20	219250.8	2631009.6	314471.152	486189.517	6172616.62	219647.435	109823.72	162954.72	2068857.93
2020-21	236790.86	2841490.37	339728.844	556805.537	7069151.00	236485.896	118242.95	186997.12	2374098.00
2021-22	255734.13	3068809.6	367007.152	635791.522	8071949.68	254671.434	127335.72	213872.58	2715306.30
2022-23	276192.86	3314314.37	396467.724	724049.688	9192467.09	274311.816	137155.91	243885.52	3096347.72
2023-24	298288.29	596576.586	70339.1903	791969.937	10054776.22	56892.7935	28446.40	44528.32	3169322.44
Pension as per minimum salary				5785.71429		CPF ERC Corpus as per minimum salary		9192467.09	
Pension on actual Salary				92320.2615		CPF ERC Corpus if adopted EPS on actual salary		3169322.44	
On actual salary Corpus exhausts in months						65.24185			
Assumptions:									
1. Active employees of Exempted organizations are allowed to join EPS									
2. Salary will increase at a uniform rate of 8% per annum. For the purpose basic & DA of Sep. 2018 is taken as base									
3. There will be no change in rules, regulations, procedures and interest pay out of EPFO so far EPS is concerned									
4. For the period up to 31.03.2018 the figures are adopted from CPF statement									