

Circular regarding Hon'ble Supreme Court (the SC) judgement dated 04 November 2022 regarding Employees' Pension Scheme, 1995, (EPS-95) in the matter of the Employees Provident Fund Organisation & Anr. Etc. Vs Sunil Kumar B. & Ors. Etc. and availability of option to contribution to EPS-95 on actual salary for Pension on such Pensionable Salary

The said guidelines is issued for the members of NTC Limited Employees Contributory Provident Fund Trust, Head Office, New Delhi. Members other than NTC Limited Employees Contributory Provident Fund Trust, Head Office, New Delhi may consult their respective region for further necessary action/ clarification.

CIRCULAR

Subject: Hon'ble Supreme Court (the SC) judgement dated 04 November 2022 regarding Employees' Pension Scheme, 1995, (EPS-95) in the matter of the Employees Provident Fund Organisation & Anr. Etc. Vs Sunil Kumar B. & Ors. Etc. and availability of option to contribution to EPS-95 on actual salary for Pension on such Pensionable Salary

- 1.0 This has reference to the captioned judgement of the Hon'ble SC regarding Employees' Pension Scheme-1995(EPS-95). As per paragraph 38, 39 & 44(ii) of the judgement, it is also applicable to the EPS-95 members from the exempted establishment.
- 2.0 NTC Limited Employees Contributory Provident Fund Trust (NTCL ECPF Trust) is an exempted establishment and the judgement is applicable to the employees/ex- employees of the NTC who are eligible as per the Hon'ble Supreme Court's Judgement dated 04 November 2022. Members of the NTCL ECPF Trust contribute to the Provident Fund at prescribed contribution rate on their actual salary as applicable from time to time. NTC also makes matching employer's contribution on actual salary to the Trust. However, contribution to the EPS-95 has been made @ 8.33% of prescribed wage ceiling as applicable from time to time. As per the rule, EPS-95 contribution is deducted from the employer's contribution to PF and is remitted to the concerned office of the Employees Provident Fund Organisation (EPFO). Pension under EPS-95 is also made by the concerned office of the EPFO.
- 3.0 EPFO has issued Circular No: Pension/2022/54877/15149 dated 29-12-2022 and corrigendum no: Pension/2022/54877/15238 dated 05-01-2023, in compliance of the Para-44(ix) read with Para-44(v) and (vi) of the SC Judgement. Para 5 of the EPFO circular specifies the employees who are eligible to exercise option as per the SC judgement in R.C. Gupta case.
- 3.1 Accordingly, it is hereby informed that all such Ex-Employees of NTC Limited who are meeting the criteria specified in the EPFO circulars, if they so desires, may submit their option to the concerned Regional Office of the EPFO (From where they are drawing Pension under EPS-95) as per the procedures and along with the supporting documents as specified in para-6 & 7 of the EPFO circular dated 29.12.2022 and corrigendum 05-01-2023. As required under clause-iv of Para-7, necessary undertaking shall be provided by NTCL ECPF Trust.
- 4.0 It is further informed that as per paragraph 43 read with paragraph 44(iv) of the SC judgement, all employees, who were members of the EPS-95 as on 01-09-2014 i.e. were below 58 years of age and who could not exercise option, as contemplated in the provision to paragraph 11(3) of the Pension Scheme to contribute to EPS-95 on actual salary instead of applicable wage ceiling, for getting pension on actual Pensionable Salary as defined in the EPS-95, would be entitled to exercise option now under paragraph 11(4) EPS-95 within a period of four months from the date of judgement i.e. on or before 3rd March, 2023.
- 4.1 It is expected that, EPFO may issue separate circular/guidelines specifying the mode and manner of deposit of amount, exercising option and for submission of joint declaration as per the paragraph-43 read with paragraph 44(iv) of the SC Judgement dated 04.11.2022, in respect of employees who were member of the EPS-95 as on 01-09-2014 (Eligible Employees).
- 4.2 Since the time to exercise option by the eligible employees is available only for a period of four (4) months from 04-11-2022, it is hereby informed to all eligible employees that as per the SC judgement they have a one-time chance to exercise their option to contribute to EPS-95 on actual salary instead of or applicable wage ceiling, for getting pension on actual Pensionable Salary, as defined in the EPS-95 Employee(s)/Ex-employee(s)/EPS-95 Pensioners, exercising the option now would be required to pay arrears of EPS-95 contribution i.e. difference between the contribution @8.33% on actual salary less contribution already deposited on applicable wage ceiling

from the date of joining the EPS-95. Additionally, such employee's shall also be required to pay interest on due arrears at applicable rate till the month of remittance. Employees may also be required to contribute 1.16% of salary exceeding 15,000.00 as additional contribution from September, 2014. However, as per the SC judgement, additional contribution can be recovered maximum for a period of six months from the date of judgement i.e. only till April-2023 or till such time any amendments is made to generate additional contribution from some other legitimate source within the scope of the Act, whichever is earlier, as a stop gap measure. The said sum shall be adjustable based on alteration to the scheme that may be made.

- 5.0 Accordingly, to enable the employees/ex-employees to take an informed decision for exercising the option, actual monthly salary (PF wages) of all eligible employees from Nov-1995 onwards as available with employees needs to be collated/compiled and send the same to NTC alongwith relevant proof such as PF statement(s) or salary slip(s) for relevant period/months. To complete the work of arrears calculation in time, employees shall have to confirm the salary data latest by 20 February 2023. A program for computation of due arrears with interest and expected pension is under development.
- 6.0 All efforts shall be made to submit the joint declaration of willing employee with EPFO within the time-line prescribed in the SC judgement. As per the SC judgement, payment of arrears shall follow the submission of joint declaration and arrears shall have to be remitted within the timeline, if any, prescribed by EPFO in this regard. Accordingly, ex-employees who would exercise the option now and who have already withdrawn the Provident Fund from NTCL ECPF Trust shall have to arrange the fund for payment of arrears to EPFO, within the prescribed time. Mode & manner of deposit of arrears shall be informed in due course in consultation with EPFO. Ex-employees/EPS-95 Pensioners may also note that revision in EPS-95 Pension may take considerable time as the pension payment under EPS-95 is done by the concerned office of the EPFO and is not in the control of the respective organization.
- 6.1 In case of serving employees, payment of arrears shall be made from the PF account of employee with the NTCL ECPF Trust.
- 7.0 All employees/ex-employees are requested to visit EPFO website for studying the judgement of the SC dated 04-11-2022, EPFO Circulars dated 29.12.2022, corrigendum dated 05.01.2023, provision of the EPS-95 Scheme and other related information such as gazette notification for various amendments in the EPS-95 w.e.f. 01-09-2014 regarding method of computation of Pensionable Salary and other provisions of the EPS-95.

This issues with the approval of Competent Authority.

Bindu Sharma
(Bindu Sharma) 15/02/2023
Account Officer (CPF Trust)

Distribution through NTC website

Copy to:

1. Concerned employees through website
2. Director (Fin./HR)
3. ALL HoD's

Date: _____

To,
**The Account Officer,
NTC Ltd. Employees CPF Trust,
Core-IV, Scope Complex,
7 Lodhi Road,
New Delhi-110003**

Sub: **Submission of Joint Option under Para 11(3)/11(4) of EPS-95.**

Dear Sir,

With reference to Hon'ble Supreme court's Judgement in case of RC Gupta and others v/s RPFC and others (2018) 14SCC809 and EPFO and others v/s Sunil Kumar B. & others, I am submitting joint option under Para 11(3)/11(4) of EPS-95 with a request to forward the same after signature and seal of Authorized Officer to EPFO for sanction and release of higher pension on full salary.

Thanking you.

Yours Faithfully

(_____)

Name:

Address:

FPF No. : DLCPM000298000000_____

UAN No. :

AADHAAR No. :

Mobile No. :

PPO No. (Only for retired employees):

Date: _____

To,
The Regional PF Commissioner,
Employees Provident Fund Organization,
Bhavishya Nidhi Bhawan,
28, Community Centre,
Wazirpur Industrial Area, Delhi-110052.

**SUBMISSION OF JOINT OPTION UNDER PARA 26(6) OF THE EMPLOYEE PROVIDENT FUND SCHEME
READ WITH PARA 11(3),(4) OF THE EMPLOYEE PENSION SCHEME FOR CONFERMENT OF PENSION ON
ACTUAL SALARY ON WHICH CONTRIBUTION IS PAID**

Applicant namely _____ an employee of NTC Limited (Estb. ID- DL/CPM/2980) which is an establishment covered under the Employee Provident Fund Act and Employee Pension Scheme, 1995, who jointly with his employer submit this joint application/option/undertaking as under: -

Applicant is a member of the Employee Pension Scheme, 1995 having Family Pension Fund (FPF) DLCPM000298000000 _____ PPO No. _____ (for retired employee) The Employer and Employee's contribution at the rate of 12% is been paid on full salary exceeding ceiling limit since the inception of the scheme.

Amendment was brought in force w.e.f. 01.09.2014 vide notification no G.S.R. 609 (E) dt. 22.8.2014 in the Employee Pension Scheme which also allowed existing members to continue paying contribution on full salary exceeding ceiling limit who were already availing the said benefit. In terms of this amended provision contained in para 11(4) of the Employee Pension Scheme 1995, the joint option was duly exercised by the Employer and Employee previously and contribution to EPFO is being paid on full salary exceeding ceiling limit since inception.

The joint option, in light of the liberty granted by the judgment dated 04.11.2022 delivered by the three Judge Bench Judgment of the Hon'ble Supreme Court in SLP No.8658-8659 of 2019 (EPFO vs. Sunil Kumar) is hereby submitted in writing jointly by the Employer and Employee reinforcing their decision to pay the contribution on full salary in order to get the benefit of determination of Employee's monthly pension on actual salary exceeding ceiling limit on which contribution is being paid to the EPFO.

Signature of Employee

Name of Employee:

Address :

Employer

Authorised Officer

FPF No. : DLCPM000298000000 _____

UAN No. :

AADHAR :

Mobile No. :

PPO No. (Only for retired employees):