Internal Communications

Ref: TRF/HR/36/2023
Date- 21st February 2023

Circular Regarding Judgement dated 04.11.2022 of Supreme Court In Respect of Employees' PensionScheme-1995

This Circular is with reference to the judgment pronounced on 4th November 2022 (Judgment) by Hon'ble Supreme Court in respect of Employees' Pension Scheme-1995 (EPS). By the Judgment, all employees who did not exercise the option under Para 11 (4) of EPS have been provided an opportunity on a one-time basis to exercise such option within an extended time of four months, i.e. latest upto 3rd March 2023.

In the context of the Judgment, Employees' Provident Fund Organization (EPFO) have issued two circulars on 29th December 2022 and 5th January 2023. On the basis of our reading of EPS '95, the Judgment and the Circulars, all employees / ex-employees are being hereby intimated of the following:

1. **Applicability**: This Circular is applicable to employees/ex-employees of TRF who are / were member of Tata Robins Fraser Limited Staff Provident Fund Trust or EPFO **AND** have contributed Provident Fund (PF) at the full salary throughout their service. The Circular is **NOT** applicable to:

   1.1. New employees who are not members of EPS '95, i.e. who have joined service initially on or after 1st September 2014

   1.2. All employees / ex-employees who have joined TRF from any other Organization on or after 1st September 2014 and have not been member of EPS '95 at any point of time

   1.3. All employees / ex-employees who originally were member of EPS '95, but have exited the membership of EPS (i.e. attained the age of 58 years), OR ceased to be a member of EPS by virtue of death OR any other reason whatsoever, as on 1st September 2014

   1.4. All employees / ex-employees who have not completed the mandatory 10 years of membership of EPS '95 and are not likely to complete 10 years of EPS membership till attaining the age of 58 years.

2. **Purpose of Circular:** Presently, the attention of employees/ex-employees is invited to their decision of taking the Joint Declaration Option (JDO), as enabled by the Judgment within the stipulated time.

3. **Anticipated Queries:** It is anticipated that in the process of availing JDO, there may be several queries in respect of complete enforcement of the Judgment. On the basis of our understanding of the judgment of Hon'ble Supreme Court and subsequent circulars of EPFO, a set of anticipated Frequently Asked Questions (FAQs) are annexed with this Circular **(Annexure-1).** The FAQs have been prepared on the basis of notifications by the authorities till date and hence, may not be complete in all respects.

4. **Date of submission of JDO:** As per the time stipulated in the Judgment, last date of submission of JDO to the respective RPFC is **3rd March 2023**. Accordingly,

   4.1a. Employees on-roll (who are assigned with Company's E-mail IDs), are requested to download pre-filled forms from their E-mail ID, sign the form and submit the same to Accounts Payroll Section OR send scanned copy to following mail id: payroll@trf.co.in **latest by 25.02.2023.** TRF shall submit the JDO of willing employees within the stipulated time.

   4.1b. Employees on-roll (who are not assigned with Company's E-mail IDs),are requested to collect pre-filled forms from their respective HODs, sign the form and submit the same to Accounts Payroll Section OR send scanned copy to following mail id: payroll@trf.co.in **latest by 25.02.2023.** TRF shall submit the JDO of willing employees within the stipulated time.

4.2. Others: For employees / ex-employees who have crossed 58 years of age and are availing EPS have to fill up the JDO off-line. Forms will be available under "What's New" at the website www.trf.co.in. The duly filled-up and signed form will have to be sent to following mail id: payroll@trf.co.in latest by **25.02.2023** for signature by TRF. The scanned form duly signed by TRF will be sent back to the employee / ex-employee for onward submission by **03.03.2023** by the ex-employee to jurisdictional RPFC office from where they are drawing pension.

For any clarification on procedural aspects of submission of JDO, any of the Nodal Officer (s) of TRF, as contained in **Annexure-2** may be contacted.

This form has been developed by TRF and may be utilized for availing the JDO. In case EPFO issues any other form subsequently, it shall be communicated, and the applicants may be additionally requiredto fill up the same.

5. **Additional Contribution:** Employees/Ex-employees, availing the JDO would be required to pay arrears, which would be non-refundable. However, computation of arrears can only be done after detailed guidelines are issued by EPFO. For ex-employees / employees who do not have balance/sufficient balance in PF need to take up directly with concerned RPFC to deposit arrears. In case of all other TRF PF members whose PF balance is with the Trust and sufficient to meet the arrears, TRF will divert the required amount from members' PF balance to EPFO as and when prescribed by EPFO.

5.1. Arrears shall be contribution @ 8.33% on actual salary minus contribution already deposited on applicable wage ceiling from the date of joining EPS-95 along with applicable interest till the date of remittance of arrears.

5.2. Employees/Ex-employees may also be required to make payment of 1.16% of salary exceeding INR 15,000/- as additional contribution from 01.09.2014. This amount will be payable with applicable interest.

5.3. Ex-employees who have already withdrawn PF from Tata Robins Fraser Limited Staff Provident Fund and would seek to avail the JDOshall have to arrange to make payment of arrears directly to EPFO, within time, as may be prescribedby EPFO.

6. **Enhancement in EPS-95 Pension**: The enhancement shall be done by the concerned Regional Office of EPFO and is not in the control of Tata Robins Fraser Limited Staff Provident Fund.

7. **Multiple Employers:** Employees who have served multiple establishments from 1995 are required to obtain JDOs their respective employers for the relevant service period along with a declaration that the employer has contributed PF on full salary and not on statutory celling limit, if salary/wage was more than the statutory ceiling during that period. In such cases they are advised to submit JDOs from all previous establishments directly to EPFO of current employer's jurisdiction.

Important: It may be noted that the JDO for enhanced pension is being obtained for implementation of the Judgment dated 04.11.2022 in order to adhere to the prescribed time limit and is subject to any ratification/guideline that may be issued by EPFO from time to time and / or any subsequent judicial pronouncement /statutory amendment, as the case may be. It may be noted that submission of the JDO by employees/ex-employees does not cast any obligation on TRF towards any higher amount of pension payable to the applicant. It is suggested that the employees/ex-employees may evaluate the benefit and take an informed decision regarding the option to avail the enhanced pension.

(Anand Chand)
CFO

(Md. Rashid Jaffrey)
CHRO

Annexure - 1

Frequently Asked Questions (FAQs)

Employee Pension Scheme – brief description

Employees' Pension Scheme, 1995 (EPS **95**) is a social security scheme introduced in November 1995, by the Central Government. This is a mandatory scheme which entitles the employees working in organized sector to receive benefits of pension after attaining the age of 58 years or premature death. Under EPS 95, 8.33% of the employee's pay is diverted from the provident fund to Pension Fund. The contribution is subject to the prescribed statutory salary limit under EPS 95, which underwent the following changes in due course:

(a) Rs. 5000/-: March 96 to September 2001
(b) Rs. 6500/-: October 2001 to August 2014
(c) Rs. 15,000/-: September 2014 till date.

The Central Government also contributes 1.16% on the prevalent pensionable salary as additional contribution. However, the EPS scheme was amended in March 1996, with employees being given an option to contribute on full salary, by inserting proviso to para 11(3) to EPS 95.

Vide EPS Amendment of 2014 (**2014 Amendment**), this inserted provision was repealed with effect from September 2014. However, employees who had already taken option to contribute on actual salary could exercise the option again within a period of 6 months extendable to 1 year.

Supreme Court judgement dated 04.11.2022 on EPS 1995 for enhanced pension.

The Supreme Court in its recent judgement dated 04.11.2022, decided on the issues:

(a) Validity of 2014 Amendment.
(b) Validity of EPFO circulars discriminating the exempting and non – exempting establishments.

The provision for contribution on actual salary was repealed with effect from 1st September 2014. The Supreme Court has upheld the validity of 2014 Amendment after the same was successfully questioned by the Kerala High Court. However, while upholding the 2014 Amendment it has given the following directions,

(i) Fresh options could be made within a period of 4 months from the date of the judgement by eligible employees.

(ii) Such option is available for employees who had earlier not taken option for contributing on actual salary and were member of the Pension Fund on or before 01.09.2014 and continued to be a member of the Pension Fund after 01.09.2014.

(iii) Employees must have contributed provident fund on actual salary to exercise the option.

(iv) The benefit of the judgement is available to exempted establishments.

Besides, the Hon'ble Supreme Court has held that the option for contributing to Pension Fund on actual salary shall also be available to employees of exempted establishments.

In order to share our understanding of the Supreme Court judgement and expected queries, a set of Frequently Asked Questions (**FAQ**) has been listed, which shall aid in understanding of the judgement. Detail operational guidelines are still awaited from Employees Provident Fund Organisation, which shall give clarity on the manner of accepting applications from eligible employees and the mode of computing the enhanced pensionary benefits. The list of FAQs shall be updated, in case of any guidelines received from the EPFO and also on the basis of queries received from employees/ex- employees. We shall keep you updated on further development, if any.

Based on the judgement, the following queries are generally being asked.

01. What are the conditions required for eligibility for diversion of pension contribution on actual/ full salary for TRF employees?

a. Employees who are member of Employees Pension Fund and not completed 58 years of age on or before 1st Sep 2014 and have attained or likely to complete 10 years of membership of Pension Fund.

02. Whether the SC judgement make any specific exclusion list of employees.

Yes

a. The Supreme Court categorically states that the benefit of the judgement **SHALL NOT** be available for such persons who had exited EPS on attaining 58 years of age prior to 1st September 2014 without exercising option for diversion to EPS on full salary from employers' contribution to Provident Fund.

b. Employees joining EPS scheme on or after 1st September 2014.

03. Which category of TRF employees, who are presently governed by Tata Robins Fraser Limited Staff Provident Fund shallbe eligible for availing the benefits of the SC Judgement.

(i) **Employees who joined employment prior to 1st Sep 2014 and continued in service and are member of EPS**

Yes.

(ii) **Employees who joined employment prior to 1st Sep 2014 and have exited the Pension Scheme after 1st Sep 2014 after attaining the age of 58 or by choice and were member of EPS**

Yes.

(iii) **Employees who have exited the pension scheme on attaining 58 years of age before 1st Sep 2014 and have not exercised the option to divert to EPS on full salary during service period**

Such employee are **NOT** eligible.

(iv) **Employees who have joined TRF after Sep 2014**

No. Only lateral joinees, subject to condition as mentioned in point no. (viii)

(v) **Employees who were members of the EPS 1995 and died after 1st September 2014, with their nominee availing of the pensionary benefits. Can the nominee avail of the option on behalf of the deceased employee?**

Yes. However, the nominee must compute the benefit of such option because they will be entitled to 50% of pension of members eligibility.

(vi) **Lateral Joinees having earlier worked with establishments, which contributed provident fund based on statutory wage ceiling or on actual wages which is lower wages whether eligible or not?**

No.

For statutory wage ceiling please refer to point no 06.

(vii) **Lateral joinees having joined TRF Limited without transfer of earlier PF accumulation to TRF, whether eligible or not?**

TRF will not be able to facilitate such type of cases. Employee may take up directly with EPFO.

(viii) **Steps to be followed by lateral joinees prior to seeking consent of TRF for thepurposes of making payment of pension contribution on actual salary?**

a. Certificate from all previous employer that contribution to Provident Fund was on full basicand Dearness Allowance.

b. Month wise salary break up from Mar 1996 or from date of joining EPS membership,whichever is later and the total amount of diversion.

c. Transfer of Provident Fund amount from all previous organisation in Tata Robins Fraser Limited Staff Provident Fund has been completed.

04. Is it compulsory to apply for higher diversion i.e. on the basis of the actual salary, if the deductions are being made in terms of the capping amount?

This is an option given to eligible employees and is purely voluntary.

05. What are the steps to be followed for making application for higher diversion (regular and discharge)

This will be communicated once the detailed guidelines will be issued by EPFO.

06. What is the effective date of diversion of the actual salary exceeding the statutory limit of the employee, if he opted for enhanced pension?

The effective date shall be when the salary crosses the statutory ceiling as prescribed from time to time under the EPS' 95.

Statutory ceiling

(Rs 5000 pm from Mar 1996 to Oct 2001)

(Rs 6500 pm from Oct 2001 to Sep 14)

(Rs 15000 pm from Oct 14)

07. What if I do not have sufficient balance in my Provident Fund Account and I am currently in employment of TRF, due to withdrawal of the loan from provident fund. Can I deposit the deficit money into the Provident Fund?

The Rules of TRF exempted fund does not have provision for accepting such deposit. Such employees are advised to take up this issue and deposit the arrear amount directly with the concerned RPFC.

08. What is expected quantum of funds required to be diverted from Provident Fund?

It is expected that 9.49% (8.33 % + 1.16%) of employee's pay from the Provident Fund accumulation and applicable interest thereon is likely to be the requirement for diversion after reducing the amount already to the Pension Fund. However, this may vary from person to person.

09. Once I have exercised the claim for diversion from full salary, can I revert to diversion on statutory limit.

No. There is likely to be a bar on withdrawal of the option from the EPFO Authorities.

10. Who shall be governed by the EPFO circular dated 29.12.2022 issued with respect to the SC judgement dated 04.11.2022?

This circular applies to persons who fulfil the following criteria:

(i) Was member of the Pension Fund prior to 1st September 2014

(ii) Was member of provident fund which contributed on actual salary in accordance with the provisions of para 26(6) of the Employees Provident Fund Scheme

(iii) Had applied for the pension contribution on actual salary and was rejected/denied by the authorities and were covered by the earlier judgement of RC Gupta given by SC.

Annexure 2

Nodal Officers for EPS 1995 for Joint Declaration Option.

Department	Nodal Officers	Mobile
Finance & Accounts	Arup Kumar Mukherjee	9007080186
Finance & Accounts	Shankar Sahu	7903438096