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COMMITTEE ON SUBORDINATE LEGISLATION
(SIXTEENTH LOK SABHA)
(2018-2019)

FOURTIETH REPORT

[ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS/ OBSERVATIONS CONTAINED IN THE TWELFTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTEENTH LOK SABHA) ON AMENDMENT TO EMPLOYEES' PENSION SCHEME, 1995]

(PRESENTED TO LOK SABHA ON 3.1.2019)

सत्यमेव जयते

LOK SABHA SECRETARIAT

NEW DELHI

January, 2018/Pausa,1940 (Saka)

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2. Shri Idris Ali
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SECRETARIAT

1. Shri Ravindra Garimella - Joint Secretary
2. Shri Ajay Kumar Garg - Director
3. Smt Jagriti Tewatia - Deputy Secretary

INTRODUCTION

I, the Chairperson, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Fourtieth Action Taken Report.

2. This Report relates to the action taken on the recommendations of the Committee contained in the Twelfth Report (2016-2017) (Sixteenth Lok Sabha) which was presented to Lok Sabha on 10.8.2016.

3. The Committee considered and adopted this Report at their sitting held on 20.12.2018.

4. The Ministry of Finance (Department of Expenditure) OM No. 1(22)/EV/2017 dated 12 December, 2017 relevant to this Report has been included in Appendix-I of the Report.

5. Extracts from the Minutes of Third Sitting of the Committee (2018-19) held on 20.12.2018 relevant to this Report are included in Appendix-II of the Report.

6. An Analysis of the Action Taken by Government on the recommendations/ observations contained in the Twelfth Report of the Committee on Subordinate Legislation (Sixteenth Lok Sabha) is given in Appendix III.

New Delhi;
December, 2018
Agrahayana, 1940 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI
Chairperson,
Committee on Subordinate Legislation

REPORT

This Report of the Committee on Subordinate Legislation (2016-17) deals with the action taken by Government on the recommendations contained in their Twelfth Report (Sixteenth Lok Sabha) which was presented to Lok Sabha on 10.8.2016.

2. The Twelfth Report contained recommendations on amendment to Employees' Pension Scheme, 1995.

3. Action taken replies in respect of all the observations/recommendations contained in Paras 1.15 to 1.20 of the Report have been received from the Ministry of Labour and Employment.

4. Replies to the observations/recommendations contained in the Report have been categorized as follows:-

(i) Observations/Recommendations which have been accepted by the Government

Recommendation. No. Nil — Total Nil
Chapter II

(ii) Observations/Recommendations which the Committee do not desire to pursue in view of the Government's reply.

Recommendation. No. Nil — Total Nil
Chapter III

(iii) Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration

Recommendation. No. 1.15 to 1.20 — Total 6
Chapter IV

(iv) Observations/Recommendations in respect of which final replies of the Government are still awaited

Recommendation. No. NIL — Total Nil
Chapter V

5. The Committee will not deal with the action taken by the Government on some of their observations/recommendations that require reiteration and merit comments.

'Amendments to Employees Pension Scheme, 1995 w.e.f 1 September, 2014 (observations/recommendations Paras 1.15 to 1.20)

6. The Committee in their original Report noted that the Employees Pension Fund and Miscellaneous Provisions Act, 1952, which came into force w.e.f. 14 March, 1952, aims at providing social and economic security to Industrial and other workers coming within the ambit of this Act. Presently, three scheme, viz. Employees Provident Fund Scheme 1952, Employees Pension Scheme, 1995 and Employee's Deposit Linked Insurance Scheme, 1976 have been framed under this Act. Prior to 1.9.2014, the payable pension amount under the Employees Pension Scheme, 1995, was calculated on the basis 12 months average salary drawn by the employee preceding the date of his superannuation for the purpose of calculation of pension amount payable to him. However, the Ministry of Labour and Employment vide their Notification GSR 609-E dated 22 August, 2014, suddenly amended the said criteria for calculation of the pension amount. The revised criteria envisages calculation of pension amount on the basis of 60 months average salary instead of 12 months average. This amendment has been made effective w.e.f. 1 September, 2014. As a result of this, there has been a substantial decrease in the amount of pensions receivable by an employee who retires after 1 September, 2014 as compared to an employee who has retired before 1 September, 2014. The Government have taken the plea that the said amendment has been made on the basis of recommendation in the actuarial valuation reports of the Employees Pension Scheme with a view to curtail deficit in the Employees' Pension Scheme Fund. The Committee also noted that by amending the norms of calculating the pension of a person who had joined this Scheme in 1995 when 12 months average was being taken into consideration to 60 months average w.e.f 1 September, 2014 amounts to retrospection application of amendment to the subscriber. In the considered view of the Committee such an amendment can't be termed as a good piece of subordinate legislation.

7. The Committee found the above mentioned amendment, which has the effect of drastically reducing the pension of the subscribers totally unacceptable. No justification had been placed before the Committee by the Government for suddenly arriving at an extremely unreasonable period of 60 months from the 12 months for calculation of pension. The Committee were not at all convinced with the plea of the Government that the same has been done on the basis of the Actuarial Valuation Report.

The Committee believed that at the time when this Scheme was initially conceived, the Government must have taken into consideration all the pros and cons including the financial implications and the social objectives while fixing the period of 12 months for calculating the pension. Further, this also raises the question about the credibility of the actuarial assessment who were unable to calculate the amount of loss. Moreover, the Ministry have failed to place before the Committee any information regarding the kind of financial constraints being faced or their quantum etc., so as to justify such a deleterious change in the criteria leading to enormous financial loss and hardship to the intender groups.

8. In the above backdrop, the Committee had strongly recommended that the earlier criteria for calculating the pension amount on the basis of the average salary of 12 months must be restored in case of at least all such employees who became members of Employees Pension Scheme prior to the Notification dated 22-08-2014 effective from 1.9.2014. The criteria of 60 months for calculation of pension and deduction of an additional 1.16% of pay exceeding Rs 15000/-, could be made applicable to only those employees who had joined Employees Pension Scheme after the Notification dated 22-08-2014 effective from 1.9.2014 after suitable modifications as the Committee find little justification for such a drastic change in the criteria.

9. The Ministry of Labour and Employment vide their action taken reply dated 23.3.2017 submitted as follows:-

> "The statutory wage ceiling on which pension contribution is received was revised from Rs 5000/- per month to Rs 6500/- per month w.e.f. 1.6.2001. Subsequently, the wage ceiling was revised to Rs 15000/- per month w.e.f 1.9.2014. If pensionable salary is calculated on the average salary for 12 months instead of present provision of 60 months, it will create huge anomaly. The members who retired on 1.9.2015 had been contributing on Rs 6500/- for the 12 months before retirements if average of only last 12

month pensionable salary is taken into account. Thus, the pension amount payable per month will be disproportionate to the contribution made by them for 13 long years and will lead to subsidization by the lower salaried group to the higher salaried group which is neither desirable nor intended. Further, this proviso will have no effect after 1.9.2019 that is on completion of 5 years of enhanced ceiling of wage (Rs 15000/-) w.e.f 1.9.2014."

10. The Ministry further submitted that:-

"The Ministry vide their above reply also submitted that, in case of employees for whom contribution is received in the pension fund on salary upto Rs 15000/- per month, 1.16% of the wage is contributed by the Central Government. Thus, the pension is funded taking into account the total contribution at the rate 8.33% and 1.16% which comes to 9.49% of the wages for such category of members.

If the existing members as on 1.9.2014 who had been contributing on salary exceeding Rs 6500/- per month and opt for contributing on salary exceeding Rs 15000/- per month, additional 1.16% is not received either from the Central Government or the employee as per the present proviso (para 11(4) of the EPS, 1995), then the pension will be funded by the contribution at the rate of 8.33% which will lead to the situation of payment of higher pension on lower contribution compared to the member contributing with the wage ceiling of Rs 15000/-. This will again amount to subsidization to higher salaried group.

Accordingly, the said contribution should be received from the employees' contribution."

11. The Committee note that the main recommendation made by the Committee in Para 1.20 of the Report have not been accepted by the Ministry of Labour and Employment. Hence, the Committee called upon the representatives of the Ministry of Labour/EPFO to appear before the Committee for providing further clarifications on the issue during the sitting of the Committee held on 4.7.2017. The Ministry of Labour & Employment while tendering oral evidence and in its post evidence replies apprised the Committee that they have taken the deicision to calculate pension on average of 60 months instead of 12 months on the adivce of Ministry of Finance (Department of Expenditure). Thus, the Committee decided to hear the views of Ministry of Finance (Department of Expenditure) also on the issue. The submissions made by the representatives of the Ministry of Labour and Employment/EPFO during the

sittings held on 4/7/2017 and 12/1/2018 and that of Ministry of Finance (Department of Expenditure) during the sitting held on 18/12/2017 have been dealt in succeeding paras.

12. On the issue of calculation of pension, the Ministry vide their subsequent reply dated 11/9/2017 clarified as follows:

> "Para 32 of the Employees' Pension Scheme 95 provides for annual valuation of the Employees' Pension Fund by a valuer appointed by the Central Government. The provision further permits the Central Government to alter the rate of contribution under the pension scheme or the scale of any benefit admissible under the Pension Scheme or the period for which such benefit may be given. Further, calculation of pensionable salary based on average salary of last 5 year is as per international practice and amendment was made on the advice of Ministry of Finance vide OM dated 21.1.2014.
>
> There cannot be two different formulae for calculation of pensionable salary in respect of members contributing upto wage ceiling Rs. 15000 per month and those contributing above the wage ceiling."

13. While justifying the enhancement of period for calculation of pension five times i.e. from prevailing period of taking average of 12 months salary to 60 months, the witness from the Ministry of Labour & Employment further submitted before the Committee during the oral evidence held on 4/7/2017as follows:-

> "the main reason is that this fund has to be a sustainable fund. It is not getting any grant or subsidy from anywhere. The Government has told that this scheme should sustain itself. In this direction, when world over practices were observed, it was found that they are taking an average of maximum of five years. That is one reason to enhance this period to 60 months.
>
> Earlier the wage ceiling was Rs.6500, which was increased to Rs.15000 in 2000-01. With that increase, the deficit had gone up. Earlier, the deficit was only Rs.47 crore. But after the increase in ceiling, the deficit had gone up very high substantially. If we calculate it taking only 12 months as an average, the fund would not sustain and will not be able to cater to the needs of pension of these poor workers
>
> But the ceiling limit has also increased substantially from Rs.6500 to Rs.15000, which is a jump of 230 per cent. Naturally, if the salary is increasing 230 per cent, equally the pension would increase. And, the life expectancy, which we mentioned has increased up to 68.35 years, has now actually increased up to 72 years. When the life expectancy is increasing; the pension amount is increasing, it would become difficult to sustain that fund if it does not get any grant or subsidy from outside. So, to sustain that

scheme, the Ministry of Finance advised to increase the average calculation from 12 months to 60 months.

The Ministry further added:

"EPFO vide letter dated 17.1.2017 had sought comments of the Actuary with respect to (1) the financial implication of the fund if Members drawing salary exceeding Rs. 15000 per month are allowed to become the members of the Pension Scheme.

The Actuary vide letter dated 13.6.2017 has categorically stated that allowing members to contribute on salary without ceiling and getting benefit on the same will not be financially viable.

The financial implication of the decision to calculate pensionable salary of the average of last 12 months salary instead of last 60 months can be worked out after valuer is appointed. The process for appointing a valuer is underway."

14. The Ministry of Finance (Department of Expenditure) vide their written reply dated 12.1.2018 submitted as follows:-

"........so far the point regarding amendment to the average salary for calculation of pension from 12 months average to 60 months average is concerned, as submitted by the Department of Expenditure in Para 2 (VIII) and (IX) of the OM No. 1(22)/EV/2017 dated 12.12.2017, the same was suggested by the Department of Expenditure purely with a view to ensuring that the Pension Fund does not run into deficit and remains financially viable."

The Ministry of Finance (Department of Expenditure) vide their OM dated 12.12.2017 also submitted a detailed background note explaining the reason for suggesting to modify the formula for calculation of pensionable salary from 1 year average salary to 5 years average salary (Appendix-I).

15. When enquired about the total financial burden that is expected to accrue because of implementation of the revised pension calculation formula, in response the witness submitted before the Committee on 4.7.2017 as follows:-

"We have not yet worked on the actuarial report for 2015-16. That we are going to do. But as per the actuarial report of 2014-15, we are not in deficit. We are having a surplus amount of Rs. 5000 crore. This is the position as per the actuarial report of 2014-15. But if the average of 60 months is not introduced, it will go to a big deficit."

16. The Committee desired to know from the representatives of the Ministry of Finance (Department of Expenditure) if they were aware of the two types of contributions being made by subscribers in EPS i.e. one being within minimum prescribed wage ceiling and the other where the contribution is made on full pensionable salary and that the change in criteria of computing pension have impacted the most, those subscribers who have made contribution on full pensionable salary. In response the Secretary, Department of Expenditure submitted the following:

> "On the issue which you have raised, the Ministry of Labour and Employment have not brought it to our Ministry's notice whether there had been an impact and losses in pension."
>
> He added that "this issue had not been brought before the Ministry/Department and they have never taken up the issue with us and if they bring some proposal in this regard before us we will study and analyse it."

17. The Ministry of Finance (Department of Expenditure) in their written reply dated 12 January, 2018 further submitted the following:

> "As per the records available in the Department of Expenditure, there is no indication whether the Report of the Expert Committee, which was submitted to the Ministry of Labour and Employment on 5.8.2010, was referred to the Ministry of Finance, Department of Expenditure of that time with any proposal based thereon.
> The proposal of Ministry of Labour for enhancement in the wage ceiling from Rs 6500 to Rs 15000 was taken up with this Department in terms of their DO. Letter no. S-35012/1/2012-SS.II dated 5.4.2013 from the then Secretary (Labour), DO letter No. S-35012/1/2012-SS.II dated 12.7.2013 from the then Minister of Labour, and also in terms of a notice for meeting contained in the OM of Ministry of Labour and Employment No. R. 15025/3/2007-SS.II/Vol.II(Pt.) dated 28.11.2013 and the DO letter No. S-35012/1/2012-SS-II dated 16.12.2013. In these communications there is no indication in regard to subscribers of EPS who are contributing within the wage ceiling and the other on full salary beyond the wage ceiling. However, MoLE had provided data stratification of the subscribers, giving the number of subscribers in wage slabs up to RS 6500/-, Rs 6501-10,000, 10,001-15000/- and 15000 and above.
> (b) The point regarding 20% decline in the pension of subscribers who were contributing at their full salary was not taken up by the Ministry of Labour and Employment."

18. The Committee in its original Report had emphasized that the criteria for calculation of pension amount on the basis of 12 months average salary instead of 60 months average salary must be restored and the deduction of an additional 1.16% of pay exceeding Rs 15000/- may not be made applicable in case of at least all such employees who became members of Employees Pension Scheme, 1995 prior to Notification no.GSR 609 E of 2014 dated 22 August, 2014 effective from 1.9.2014. The Committee note from the action taken reply furnished by the Ministry of Labour & Employment that, the statutory wage ceiling on which pension contribution is received was revised from Rs. 5000/- pm to Rs. 6500/- pm w.e.f 1.6.2001. Subsequently the wage ceiling was revised to Rs. 15000/- pm w.e.f 1.9.2014. If pensionable salary is calculated on the average salary for 12 months instead of present provision of 60 months, it will create huge anomaly. The members who retired on 1.9.2015 had been contributing on Rs. 6500/- for the 12 months before retirement if average of only last 12 month pensionable salary is taken into account. Thus, the pension amount payable per month will be disproportionate to the contribution made by them for 13 long years and will lead to subsidization by the lower salaried group to the higher salaried group which is neither desirable nor intended. Further, they also stated that the proviso will have no effect after 1.9.2019 i.e. on completion of 5 years of enhanced ceiling of wage (Rs 15000/-) w.e.f 1.9.2014. The Committee are of the view that even if the contention given by the Ministry that the proviso will have no effect after 1.9.2019, is accepted still this can be termed as a prejudiced piece of delegated legislation as it is still affecting the interest of large no. of subscribers who will retire w.e.f 1 September, 2014 to 1 September, 2019.

19. The Committee further note from the subsequent submission made by the Ministry of Labour & Employment that the pension fund is a sustainable fund and it does not get any grant or subsidy from anywhere. Further, calculation of pensionable salary based on average of last 5 years is as per international practice and to sustain the scheme, the Ministry of Finance advised to increase the average calculation from 12 months to 60 months. The Ministry of Finance had also categorically advised to ensure

that there is no cross subsidization by one category of members (i..e who are contributing below Rs. 15000/-) to the others (who are paying above Rs. 15000/-). The Ministry of Labour & Employment also submitted that there cannot be two different formulae for calculation of pensionable salary in respect of members contributing upto wage ceiling of Rs. 15000/- pm and those contributing above the wage ceiling.

20. The Committee are however, of the view that the argument of the Ministry that there cannot be two formulae for calculating pension does not hold water as the Central Government Employees are presently covered under two different pension schemes which are entirely different from each other. A new pension is applicable to employees who joined Central Government services on or after 1.1.2004 and however, the earlier pension scheme continues for the employees appointed prior to 1.1.2004. The Committee are strongly opposed to the above argument of the Ministry which is more of academic nature and far from the practical reality.

21 The Committee also sternly disapprove the contention of the Ministry that sustainability of the fund was at risk due to which the criteria of 60 months of average salary for calculation of pension was introduced. The Committee are also appalled to note that the Ministry of Finance (Department of Expenditure) had no knowledge of the second category of the EPS subscribers, especially those who were making contribution on the full salary. The Department of Expenditure also modified the recommendation of the expert committee Report of the Ministry of Labour and Employment, in which besides other changes the formula for computation of pension was proposed to be increased from existing 1 year to 3 years. The Committee thus take serious note of the fact that both the Ministries i.e. Labour & Employment and Finance (Department of Expenditure) have played very safe by taking into consideration only the consequences of wage revision done in 2001 i.e. from Rs. 5000/- to Rs. 6500/- The Committee are of the firm opinion that both the Ministries didn't make sincere and serious efforts to also take into consideration the interest of employees who were contributing on maximum wages, actuarial valuation report and also the Report of the

expert Committee before taking the final decision in the matter. While taking note of the fact that the EPS generated surplus as on 31.3.2015 i.e. after implementation of the amendments to the Pension Scheme in 2014, the Committee are inclined to conclude that this is indicative of the fact that the outcome of changes in the scheme were not estimated properly and the recommendation of the expert committee appointed by Ministry of Labour and Employment was also partially overrided by increasing the number of years of average salary for computation of pension under EPS from 3 to 5 years. This harsher measure of increasing the number of years of average salary for computation of pension over and above the recommendation of the expert committee could have been avoided by the Ministry of Finance (Department of Expenditure) as the same has resulted in reduction of the pension amount to the tune of 20% to 25% especially in case of subscribers who were contributing on maximum wage. The Committee feel this is a clear case of breach of contract conditions as it was not possible for any subscriber to foresee the future event. The Committee are also of the firm opinion that by amending the norms for calculating the pension of a person who has joined the pension scheme of 1995 based on 12 months average salary to 60 months average salary w.e.f 1 September, 2014 is technically wrong and it amounts to retrospective application of the amendment especially in case of a person who has retired in September, 2014. The Committee are of the opinion that the change in criteria for pension calculation and other changes made to calculate the pension should have been prospectively made applicable to the prospective subscribers and should not have imposed on the existing subscribers who joined the scheme with a different terms of condition under the scheme.

22. The Committee are, therefore, not convinced with the contention of the Ministry on the same analogy as was given by the Committee in its original Report (Para 1.17 of 12th Report, 16 LS) that any investment/Fixed Deposit/Insurance policy taken at a particular time cannot be reduced if at the time of its maturity or few years before its maturity the interest rates are decreased. For example, in schemes where a fixed

amount of monthly/quarterly/yearly premium is to be deposited for a very long period viz. 25 to 30 years, in case of change in interest rate or any terms and conditions of such policy after 10 years or so, the government calculates the maturity amount for those 10 years with the pre-agreed amount of interest and thereafter either it is stopped or settled with the revised interest for remaining period instead of decreasing the interest from the very first day.

23. The Committee find another glaring omission on the part of the Ministry of Labour in their failure to make any kind of distinction between the category of subscribers contributing within the wage ceiling and the category of subscribers contributing on their full salaries irrespective of wage ceiling. The Committee find it difficult to comprehend as to how the wage ceiling of Rs 6500 or the revised ceiling of Rs 15000 is relevant in the case of the subscribers who right from the very beginning of the EPS Scheme have opted for contribution on the basis of their full wages say Rs 40000 or Rs 50000 etc. In such a scenario, the Committee feel that it is not at all logical or justified to club such subscribers with the those contributing within the wage ceiling in applying the revised criteria of calculation of the pension on the basis of the average salary of the last 60 months instead of the earlier 12 month as it would drastically reduce their pension of full wage subscribers by almost 20 percent. Even the Ministry of Finance (Department of Expenditure) have stated that this category of subscribers contributing on their full wages was never brought to their notice by the Ministry of Labour. As the percentage of such category of subscribers is very meagre constituting just 1.33 percent of the total subscribers base, the Committee strongly recommend that the pension of subscribers contributing on their full wages should continued to be calculated on the basis of the average of last 12 months salary as they are not in any way linked to the wage ceiling.

24. In respect of their other recommendations contained in the original Report, the Committee reiterates its earlier stand and recommend that the Government should now

expeditiously get the actuarial valuation done and should evolve a formula for all such subscribers who opted for Employees Pension Scheme, 1995 and will retire w.e.f 1.9.2014 till September, 2019 i.e. the time by which as per the Ministry's submission this proviso will have no effect, for payment of pension equivalent to an amount that they would have received prior to the implementation of the amendment viz. calculating the pension amount on the basis of the average salary of 60 months and the deduction of 1.16% of pay exceeding Rs 15000/-

The Committee would like to be apprised of the final action taken in this regard within 3 months of presentation of this Report.

CHAPTER II

OBSERVATIONS/ RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

-Nil-

CHAPTER III

OBSERVATIONS/ RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES

-NIL-

CHAPTER IV

OBSERVATIONS/ RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED AND WHICH REQUIRE REITERATION

(Observations/Recommendations - Para No. 1.15-1.20)

The Committee note that the Employees Pension Fund and Miscellaneous Provisions Act, 1952, which came into force w.e.f. 14 March, 1952, aims at providing social and economic security to Industrial and other workers coming within the ambit of this Act. Presently, three scheme, viz. Employees Provident Fund Scheme 1952, Employees Pension Scheme, 1995 and Employee's Deposit Linked Insurance Scheme, 1976 have been framed under this Act. In this regard, the Committee note that prior to 1.9.2014, the payable pension amount under the Employees Pension Scheme, 1995, was calculated on the basis 12 months average salary drawn by the employee preceding the date of his superannuation for the purpose of calculation of pension amount payable to him. However, the Ministry of Labour and Employment vide their Notification GSR 609-E dated 22 August, 2014, suddenly amended the said criteria for calculation of the pension amount. The revised criteria envisages calculation of pension amount on the basis of 60 months average salary instead of 12 months average. This has resulted in a substantial decrease in the payable pension amount and the same has also been admitted by the Government during evidence before the Committee on 23.5.2016. This amendment has been made effective w.e.f. 1 September, 2014. As a result of this, there has been a substantial decrease in the amount of pensions receivable by an employee who retires after 1 September, 2014 as compared to an employee who has retired before 1 September, 2014. The Government have taken the plea that the said amendment has been made on the basis of recommendation in the actuarial valuation reports of the Employees Pension Scheme with a view to curtail deficit in the Employees' Pension Scheme Fund.

[Para No. 1.15 of the 12th Report (16LS)]

Having considered the background and the aims and objects of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Committee are of the considered view that the extant amendment made by the Government towards calculation of the Pension is totally against the principles of natural justice and contrary to the spirit of the original Pension Scheme and is definitely prejudicial to the interests of those employees who are attaining the age of superannuation after 1 September, 2014. The amendment is adversarial and arbitrary in nature as the persons who retire upto one day before 1 September, 2014 will get higher pension on account of calculation based on 12 month average salary while those who retire after 1.9.2014 will get substantially lower pension calculated on 60 months average salary, although at the time of joining the Pension Scheme both the category of employees were entitled to receive the same amount of pension. In the opinion of the Committee, the people at the time of joining this scheme entered into a kind of contract with the Government that their pension amount would be calculated on the basis of average salary of 12 months Basic Pay and DA. Subsequently amending the scheme in such a drastic manner and reducing their pension amount to the tune of 20 to 25 % is a clear case of breach of contract conditions as it was not possible for any subscriber to foresee the future event. In addition, under this amendment, the employees will also be paying an additional 1.16% of the pay exceeding `15000/- from the employee's subscription which will result in drop in the corpus of terminal benefit at the time of superannuation. Moreover, the above amendment will cause great hardship to the employees as many employees would have done their future planning keeping in mind their superannuation and may not be having any other source of income after retirement except pension. In this regard, the Committee feel that issues like marriage of children, construction of house and other such family responsibilities require substantial money and these requirements are generally met from the gratuity and provident fund, which the employees get at the time of superannuation and pension remains the main source of meeting the day to day house hold requirements, including the household expenditure.

[Para No. 1.16 of the 12th Report (16LS)]

As an analogy, the Committee observe that if a person has invested in a Bank Fixed Deposit Scheme or has taken a particular policy from the insurance company, the Bank cannot subsequently reduce the rate of interest on the said FD and also the insurance company cannot renege from the contract of policy, even if the policy is not bringing the required profit to the insurance company. It can stop the fresh enrolment of customers and close the policy but cannot deny the amount due to the policy holder. Similarly, the Government cannot reduce the pension of a person or alter the conditions of pension to a retired person, although the Government can introduce a new pension scheme for newly recruited employees by revising the pension scheme as has been done by Government of India by bringing New Pension Scheme (NPS) *w.e.f.* 1.1.2004 for Central Government Employees recruited after 31.12.2003. In the opinion of the Committee had the employees been aware that their pension at the time of superannuation would be calculated on the basis of 60 months salaries instead of 12 months, they might not have opted to join the pension scheme on actual salary basis i.e. scheme 'A' by making higher contributions from their salaries since the introduction of this scheme in 1995.

[Para No. 1.17 of the 12th Report (16LS)]

The Committee also note that by amending the norms of calculating the pension of a person who has joined the pension scheme of 1995 based on 12 months average salary to 60 months average salary w.e.f. 1 September, 2014 amounts to retrospective application of the amendment to the subscribers and adversely affecting their interests. In the considered view of the Committee, such an amendment cannot be termed as a good piece of subordinate legislation which is prejudicially affecting a large number of beneficiaries. Moreover, the Committee on Subordinate Legislation have time and again emphasized that as far as possible, retrospective application of rules should be avoided and if at all it is to be implemented then it must be ensured that it does not have the effect of adversely affecting the interests of anyone and in all such cases, a certification must invariably be given by the issuing authority in this regard. In this regard, the attention of the Ministry is invited to the following recommendations of the Committee on Subordinate Legislation <u>(Para 11.7.4 (ii), Chapter 11 of Manual of Parliamentary Procedures in the Government of India of Ministry of Parliamentary Affairs):-</u>

> " In cases where the parent Act provides for giving of retrospective effect, the rules framed thereunder should be accompanied by an explanatory note setting out therein the reasons and circumstances which necessitated the giving of such retrospective

effect. The note should also indicate that the interests of no one will be prejudicially affected by giving retrospective effect. In cases where the parent Act does not provide for giving retrospective effect but retrospective effect is proposed to be given due to unavoidable circumstances, prior action should be taken to clothe it with legal sanction for the purpose"

Even if a provision for retrospective effect is contained in an Act of Parliament, the Committee feel that it could never be the intention of Parliament that such delegated Legislation would be exercised in any kind of unreasonable manner and opposed to public policy by prejudicially affecting the interests of large number of subscribers of the scheme. Moreover, the step leading to loss of pension to such a vulnerable group militates against the espoused philosophy of "*Sabka Saath Sabka Vikas*".

[Para No. 1.18 of the 12th Report (16LS)]

The Committee wish to caution that Employees Pension Scheme is a social Security Scheme and it should always be the endeavour of a popular Government to judicially exercise the power of subordinate legislation for the further betterment of the welfare of the society instead of causing hardships and economic despair. The Committee find the above mentioned amendment which has the effect of drastically reducing the pension of the subscribers totally unacceptable. No justification has been placed before the Committee by the Government in suddenly arriving at an extremely unreasonable period of 60 months from the 12 months for calculation of pension. The Committee are not at all convinced with the plea of the Government that the same has been done on the basis of the Actuarial Valuation Report. The Committee believe that at the time when this Scheme was initially conceived, the Government must have taken into consideration all the pros and cons including the financial implications and the social objectives while fixing the period of 12 months for calculating the pension. Further, this also raises the question about the credibility of the actuarial assessment who were unable to calculate the amount of loss. Moreover, the Ministry have failed to place before the Committee any information regarding the kind of financial constraints being faced or their quantum etc. so as to justify such a deleterious change in the criteria leading to enormous financial loss and hardship to the intender groups.

[Para No. 1.19 of the 12th Report (16LS)]

In the above backdrop, the Committee strongly recommend that the earlier criteria for calculating the pension amount on the basis of the average salary of 12 months must be restored in case of atleast all such employees who became members of Employees Pension Scheme prior to the Notification dated 22-08-2014 effective from 1.9.2014. The criteria of 60 months for calculation of pension and deduction of an additional 1.16% of pay exceeding Rs 15000/-, could be made applicable to only those employees who had joined Employees Pension Scheme after the Notification dated 22-08-2014 effective from 1.9.2014 after suitable modifications as the Committee find little justification for such a drastic change in the criteria.

[Para No. 1.20 of the 12th Report (16LS)]

Reply of the Ministry

The statutory wage ceiling on which pension contribution is received was revised from Rs 5000/- per month to Rs 6500/- per month w.e.f. 1.6.2001. Subsequently, the wage ceiling was revised to Rs 15000/- per month w.e.f 1.9.2014. If pensionable salary is calculated on the average salary for 12 months instead of present provision of 60 months, it will create huge anomaly. The members who retired on 1.9.2015 had been contributing on Rs 6500/- for the 12 months before retirements if average of only last 12 month pensionable salary is taken into account. Thus, the pension amount payable per month will be disproportionate to the contribution made by them for 13 long years and will lead to subsidization by the lower salaried group to the higher salaried group which is neither desirable not intended. Further, this proviso will have no effect after 1.9.2019 that is an completion of 5 years of enhanced ceiling of wage (Rs 15000/-) w.e.f 1.9.2014.

In case of employees for whom contribution is received in the pension fund on salary upto Rs 15000/- per month, 1.16% of the wage is contributed by the Central Government.

Thus, the pension is funded taking into account the total contribution at the rate 8.33% and 1.16% which comes to 9.49% of the wages for such category of members.

If the existing members as on 1.9.2014 who had been contributing on salary exceeding Rs 6500/- per month and opt for contributing on salary exceeding Rs 15000/- per month, additional 1.16% is not received either from the Central Government or the employee as per the present proviso (para 11(4) of the EPS, 1995), then the pension will be funded by the contribution at the rate of 8.33% which will lead to the situation of payment of higher pension on lower contribution compared to the member contributing with the wage ceiling of Rs 15000/-. This will again amount to subsidization to higher salaried group.

Accordingly, the said contribution should be received from the employees' contribution.

(M/o Labour and Employment OM No. H-11013/2/2016-SS-II dated 1.3.2017)

Observations/Recommendations of the Committee on the action taken reply furnished by the Ministry of Labour and Employment to Paras 1.15 to 1.20 of the 12th Report as well as the further clarifications furnished by the Ministry may be seen at paras no. 18 to 23 of Chapter I of the Report.

CHAPTER V

OBSERVATIONS/ RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

-NIL-

New Delhi;
December, 2018
Agrahayana, 1940 (Saka)

DILIPKUMAR MANSUKHLAL GANDHI
Chairperson,
Committee on Subordinate Legislation

Appendix – I
(Vide Para 4 of the Introduction)

No.1(22)/EV/2017
Ministry of Finance
Department of Expenditure
(EV Branch)

North Block, New Delhi - 110 001
12th December, 2017

Office Memorandum

Sub: Oral evidence of the representative of Department of Expenditure on the action taken note on the recommendations contained in 12th Report of Committee on Subordinate Legislation relating to amendment in the Employees' Pension Scheme, 1995 – regarding

The undersigned is directed to refer to Lok Sabha Secretariat's O.M. No.11/19/14/COSL/2017, dated 05.12.2017, on the subject mentioned above and to explain the position of this Department in the subsequent paragraph.

2. While the replies to the points contained in the note attached with the aforesaid O.M. are contained in the statement attached at Annexure, a brief background of the issue, as considered in the Department of Expenditure in January, 2014, is also brought out below to put the matter in perspective explaining the reason for the suggestion of the Department of Expenditure to modify the formula for calculation of pensionable salary from 1 year average salary to 5 year average salary:-

(I) The Ministry of Labour had constituted an Expert Committee in June, 2009 to review the EPS, 1995. The Expert Committee submitted its report on 05.08.2010. In its Chapter 4, pertaining to performance of the EPS, 1995, the Committee notes that the scheme was framed with the objective of providing regular old age income under the following assumptions:-

(i) The Pension Fund shall have adequate interests earning so as to ensure reasonable pension and other benefits to the members,
(ii) Members would continue with their membership and continue to contribute to the scheme so as to avail most of the retirement/superannuation benefits in the form of regular income rather than premature benefits.
(iii) The statutory wage limit would only be increased with prior actuarial analysis since it was a defined benefit scheme and wage limit may increase the deficit in EPS, 1995. Similarly, any change in the benefits provided under the scheme would only

be made after making a proper actuarial analysis under para 32 of EPS so as to keep the scheme viable.

(II) The Committee noted that the Pension Fund was in actuarial surplus from 1996 to 2000 and thereafter the fund came in actuarial deficit. The main reasons given by the Committee for actuarial deficit, as mentioned in para 4.3.1 of its Report, are mismatch in expected pattern of exit from the scheme, amendments in the scheme without being backed up by actuarial advice.

(III) The adverse impact of increase in wage ceiling without actuarial valuation on the Pension Fund has also been commented by the Expert Committee. The Committee notes that the wage ceiling of Rs. 6500 was fixed in 2001, enhanced from Rs. 5000. At that time no actuarial advice was taken. This injected an instant actuarial deficit to the tune of Rs. 10,000 crore, as no provision was made to obtain the contribution on the enhanced salary for the earlier period of service already put in on which the benefits would eventually be paid at the time of superannuation. In this connection, para 3 of Chapter 4 of the Expert Committee on EPS, 1995 refers.

(IV) The Committee considered various options to increase the wage ceiling from Rs. 6500 and at the same time to make necessary and concomitant changes to make the Pension Fund viable. In the option pertaining to the higher wage ceiling of Rs. 15000 without changing the rate of contribution, the Committee recommended that in order to wipe out the actuarial deficit of Rs. 69,834 crore (as on 31.3.2009), the following 5 changes were required:-

a) Pensionable salary should be average of last 3 years instead of 1 year,
b) Withdrawal option, i.e. exit from the scheme by taking a lump sum before entering 10 years of service should be deleted,
c) Bonus of 2 years upon 20 years of service (at superannuation) should be discontinued,
d) Superannuation age should be raised from 58 to 60.
e) Early pension before the age of 55 years should not be allowed.

(V) The Committee mentioned that if the above measures are taken, the base deficit of Rs. 69,834 crore would be turned into surplus of Rs. 1986 crore. In this connection, Scenario I of the Report of the Expert Committee refers. Alone on account of pensionable salary of 3 years, the savings projected was Rs. 8774 crore in the Pension Fund.

(VI) The relevant extracts from the Report of the Committee are at Appendix-1.

(VII) As per the information given by Ministry of Labour, the EPS pension fund was reported to have actuarial deficit of Rs.6712.96 crore as on 31.03.2013. The proposal of Ministry of Labour to enhance the wage ceiling from Rs.6500 to Rs.15000 was sent to the Ministry of Finance in January, 2014 along with a proposal to ensure a minimum pension of Rs.1000 P.M. While the financial implication in case of minimum pension was indicated at Rs.1217 crore in the 1st year, the financial implications on enhancement of wage ceiling was estimated at Rs.2000 crore in 1st year.

(VIII) While agreeing to the enhanced wage ceiling of Rs. 15000 and minimum pension of Rs. 1000 p.m., this Department vide its OM dated 21.1.2014 sent to Ministry of Labour with the approval of the then FM, advised for change in the pensionable salary based on the average of 5 years. The following points were taken into consideration by this Department at that time:-

(i) The increase in wage ceiling was likely to have considerable implications on the overall pool of Pension Fund on account of the increase in wage and how this increase would compare with the pension outgo will only be known through an actuarial valuation.

(ii) The Government contribution at 1.16% of the wage should be restricted to the wage of Rs. 15000. This was suggested since the Government contribution is meant for vulnerable class of workers.

(iii) There was steep jump in deficit from Rs. 43 crores in the 5th valuation for the period 1.4.2000 to 31.3.2001 to Rs. 17136 crore in the 6th valuation for the period from 1.4.2001 to 31.3.2002. This steep jump was contributed by the increase in the wage ceiling from Rs. 5000 to Rs. 6500 effected in 2001.

(iv) After the increase in wage ceiling for such members as were continuing in the scheme from an earlier point in time, the accrual of benefit was calculated on the higher wage ceiling for the entire period, whereas their contribution to the fund was on the lower wage ceiling till 2001. As a result of this, this pay out increased way beyond the contribution to the fund, leading to a huge increase in deficit. To ensure that this phenomenon is not replicated as result of the wage ceiling to Rs. 15000, calculation of the pension benefit on higher wage ceiling may be done prospectively, i.e., pension will be determined on prorata basis taking into consideration the contributed amount in both the periods.

(v) Based on the estimation of the Expert Committee to wipe out the deficit of Rs. 69,834 in the Pension Fund, this Department mentioned that there would be a surplus of Rs. 4998 core based on the measure recommended by the Committee, relating to saving due to salary of 3 years, deletion of withdrawal option, disallowing bonus for 2 years, raising of retirement age to 60 years and raising the age of early pension.

(IX) The suggestion of this Department of 21.1.2014, insofar as the suggestion of this |Department to work out pensionable salary based on average of 5 years salary, is basically guided by the fact that the Pension Fund does not run into excessive deficit which devolves on the Central Budget and also because the EPS is basically a contributory pension scheme, where benefits are based on annual actuarial analysis. It was clearly taken note that the last enhancement in wage ceiling from Rs. 5000 to Rs. 6500 in 2001 had put the Pension Fund into deficit and at that time no actuarial valuation was done to estimate the implications of the increase. Likewise, no valuation was done was by Ministry of Labour as part of their proposal to enhance wage ceiling to Rs. 15000. The fact that the proposed increase entailed financial implications of Rs. 1870 crores on the Central Exchequer in the first year was a clear pointer that Pension Fund was not sustainable to support such an increase. It was for this reason that this Department suggested to modify the average salary to work out pensionable salary from 1 year to 5 years, which is basically based on the recommendation of the Expert Committee which recommended for 3 years average salary. This minor change in the recommendation of the Expert Committee was only with the intention of keeping the Pension Fund viable and to lessen the financial impact on Central Government.

3. Accordingly, the enhancement in the wage ceiling from Rs. 6500 to Rs. 15000 was part of the recommendation on an Expert Committee, which suggested for this enhancement as a package comprising certain other measures so as to ensure that the Pension Fund remains viable and does not run into deficit. The Committee had well taken note as to how the Pension Fund ran into a huge deficit in 2001 when the wage ceiling was raised from Rs. 5000 to Rs. 6500. It was for this reason that the Committee recommended a number of measures so that the Pension Fund remains viable, including the measure to modify the formula for pensionable salary calculation from 1 year average to 3 year average salary. This Department was conscious of the need to keep Pension Fund viable because the enhancement in wage ceiling and the minimum

pension of Rs. 1000 had both financial implication on the Budget to the tune of Rs. 1282.09 crore (in case of minimum pension of Rs. 1000) and Rs. 1870.5 crore (in case of wage ceiling increase to Rs. 15000) as informed by Ministry of Labour in their DO letters dated 16.12.2013 (Appendix II & III). This was only in the first year and the long term implication could not be spelt out by the Ministry of Labour and it was felt that the scheme may have adverse fiscal effects. It was also noted that the changes in the EPS had been under consideration in various fora for a considerable length of time and the Expert Committee which submitted its Report in 2010 could not come up with clear recommendation and the proposal of the Ministry of Labour for the revised wage ceiling of Rs. 15000 closely corresponded to one of the recommendations. It was also noted that while the immediate cost to the Government have been worked out by the Ministry of Labour, the long term effects on the Pension Fund had not been assessed. Whether the EPS would be a financially self-sustaining scheme was not clear.

4. Accordingly, it may be appreciated that the basic rationale for suggestion of the Ministry of Finance, Department of Expenditure, as sent to Ministry of Labour on 21.1.2014 for modifying the calculation formula for working out pensionable salary was based on the genuine concern for keeping Pension Fund financially viable as only a viable Pension Fund can ensure requisite pension for the sake of social and income security in old age of the members.

5. It is also intimated that Shri Ajay Narayan Jha, Secretary (Expenditure) and Smt. Annie George Mathew, Joint Secretary (Pers) will represent this Department for oral evidence.

6. This has the approval of the Finance Minister.

(Vivek Ashish)
Under Secretary to the Government of India
Phone:23095633

To

Lok Sabha Secretariat,
(Kind Attn:Shri Ajay Kumar Garg, Director)
608, Parliament House Annexe,
New Delhi - 110 001

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Appendix – II
(Vide Para 5 of the Introduction)

EXTRACTS FROM MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2018-2019)

The Third sitting of the Committee (2018-2019) was held on Thursday, the 20th December, 2018 from 1500 hours to 1630 hours in Committee Room No. 'D', Parliament House Annexe, New Delhi.

PRESENT

1. Shri Dilip Kumar Mansukhlal Gandhi — Chairperson

MEMBERS

2. Shri Birendra Kumar Chaudhary
3. Shri Shyama Charan Gupta
4. Shri S.P. Muddahanume Gowda
5. Shri Chandulal Sahu
6. Shri Alok Sanjar
7. Shri Ram Prasad Sarmah
8. Adv. Narendra Keshav Sawaikar

SECRETARIAT

1. Shri Ajay Kumar Garg - Director
2. Shri Nabin Kumar Jha - Additional Director
3. Smt. Jagriti Tewatia - Deputy Secretary

WITNESSES

XX XX XX

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. The Committee then considered the following draft reports:

(i) Draft Report on the Acts/Rules/Regulations/Bye-Laws governing the Admission Process of Bachelor of Ayurveda/Homeopathy and other Courses for Higher Studies in Ayurveda/Homeopathy

(ii) Draft Report on Rules/Regulations governing the service condition of Delhi, Andaman & Nicobar Islands Civil Service (DANICS) and Central Secretariat Service (CSS).

(iii) Draft Action Taken Report on the recommendations/observations contained in the 8th Report (16th Lok Sabha) of the Committee.

(iv) Draft Action Taken Report on the observations/recommendations contained in the 12th Report of the Committee (16th Lok Sabha) on the Amendment to Employees Pension Scheme, 1995.

(v) Draft Action Taken Report on the action taken by the Government on the Recommendations / Observations contained in the Sixteenth Report of the Committee on Subordinate Legislation (Sixteenth Lok Sabha) on Rules/Regulations framed under various Acts of Parliament pertaining to the Ministry of Ayush (Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy).

(vi) Draft Action Taken Report on the observations/recommendations contained in the 20th Report of the Committee (16th Lok Sabha) on the RBI Pension Regulations, 1990.

3. After deliberations, the Committee adopted the above draft Reports without any modifications. The Committee also authorized the Chairperson to present the same to the House.

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The Committee then adjourned.

**Omitted portion of the Minutes are not relevant to this Report

APPENDIX III

(Vide para 6 of the Introduction)

Analysis of the Action Taken by Government on the recommendations/observations contained in the Twelfth Report of the Committee on Subordinate Legislation (Sixteenth Lok Sabha) on "Amendment to the Employees' Pension Scheme 1995".

I	Total number of recommendations	6
II	Recommendations/observations that have been accepted by the Government.	Nil
	Percentage of total	-
III	Recommendations/observations which the Committee do not desire to pursue in view of Government's replies	Nil
	Percentage of total	-
IV	Recommendations/observations in respect of which replies of the Government have not been accepted by the Committee.	6
	Percentage of total	100%
V	Recommendations/observations in respect of which final replies of Government are still awaited	Nil