

Shiva Gopal Mishra
Secretary

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Joint Consultative Machinery
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No.NC-JCM-2023/RPS

June 9, 2023

The Secretary,
Ministry of Finance,
&
Chairman of the Committee to
Review the Pension System for
Government Employees
North Block,
New Delhi

Sub:- Memorandum demanding Scraping of the No Guarantee
NPS and Request for Restoration of the Old Pension
Scheme under CCS Pension Rules 1972.

Ref:- Ministry of Finance OM No. 1/(4)/E-V/2023 dated
06/04/2023

Dear Sir,

At the outset on behalf of the Staff Side of the National Council (JCM) which represents the more than 32 Lakhs Central Government Employees convey our thanks and gratitude for inviting us for discussion on the subject of "Review of Pension System for Central Government Employees". We take this opportunity to submit the following considered view points of the entire Central Government Employees on the demand of withdrawal of the No Guarantee National Pension System and to restore the Defined and Guaranteed Old Pension Scheme to the Central Government Employees who were recruited on or after 01/01/2004.

1. The Staff Side of National Council (JCM) right from the day when the Government announced its decision to replace the Old Pension Scheme and to implement the New Contributory Pension Scheme popularly called as NPS, during the year 2003 opposed and rejected the same since Pension of the Government Employees cannot be left to the vagaries of the market. Pension is "deferred wages" for the protection and subsistence during the old age. Moreover the then Government introduced the Contributory Pension Scheme without any consultation with the Trade Unions / Associations of the Central Government Employees including the Staff Side of National Council(JCM).

2. The Staff Side of National Council (JCM) immediately raised the issue in the National Council (JCM) Meetings and we demanded that the Contributory Pension Scheme implemented by the Government should be withdrawn and we put forth many arguments in support of our demand. One of our argument was that the 5th CPC while fixing the pay scales and other benefits has made its recommendations on the basis that Central Government Employees would continue to be governed by the defined and guaranteed Old Pension Scheme under CCS Pension Rules 1972. The wage structure determined by the 5th CPC was on the premise that Pension liability shall be that of the Government and therefore no Contribution for Pension is payable by them. The Staff Side also suggested that the existing defined and guaranteed Pension Scheme under CCS (Pension) Rule 1972 should continue and the contribution scheme introduced by the Government should be an additional Social and Old Age Security option for the employees and be made voluntary in character.
3. After several round of discussions with the Staff Side finally on 14/12/2007, in the Standing Committee meeting of the National Council (JCM) Chaired by the Secretary DOPT the official side gave the following assurance:-

“The Official Side stated that under the NPS, pension system of the employees who entered government service prior to 1.1.2004 is not altered in any way hence, the NPS has no implication for this category of employees. For employees who had entered w.e.f. 1.1.2004 are not likely to be worse off vis-à-vis the current pension system in force, as the replacement rate would match to the present one. Thus, NPS is a win-win situation for employees and the government”

However having not convinced with the assurance given by the Official Side, the Staff Side and the Central Government Employees organizations continued to fight against the No Guaranteed NPS and several representation were submitted to the Government in this regard.

4. The Staff Side while submitting its memorandum and oral evidence before the 7th CPC demanded and advocated for scrapping the NPS on the grounds that it discriminates between two sets of Government Employees, uncertainty regarding the actual value of their future

pension in the face of market related risk, the effective salary becomes less since the employees has to mandatorily contribute 10% of their basic pay + DA towards the pension fund, the NPS employees have no recourse to GPF for their savings etc. The 7th CPC after recording all our concerns on NPS recommended to constitute a High Level Committee to review the implementation of NPS.

5. Accordingly the Government of India Constituted a Committee Under the Chairmanship of Secretary (Pension). The Staff Side appeared before the Committee and made presentation before the Committee with facts & figure and demanded that NPS should be withdrawn and Old Pension Scheme should be restored back. After our presentation before the committee we were given an impression that the committee would recommend for scrapping NPS and to restore OPS for those Central Government Employees who were recruited on or after 01/01/2004. The Committees Report was never spared with the Staff Side despite our repeated request. The government subsequently on the plea of implementing the recommendations of the Committee decided to increase its contribution from 10% to 14% w.e.f. 01/04/2019.
6. It is now 20 years after the implementation of NPS. The Experience of almost 20 years has fully demonstrated the truth that the National Pension System implemented by the Government of India unilaterally during the year 2003 for those Central Government Employees recruited on or after 01.01.2004 and subsequently by various State Governments, Autonomous Bodies and Authorities, etc. has deprived Social Security/old age security to the Retiring Employees and has violated the following written assurance given by the Government of India in the Standing Committee meeting of the National Council (JCM) held on 14.12.2007.
7. However the assurance of the Government of India has been clearly violated which is evident from the following table/illustration wherein it is clearly proved that the pension under NPS is not at all matching with the Pension rate under the Old Pension Scheme.

NPS Employees retired from one of the Defence Ordnance Factory

<u>Name</u>	<u>T.No./Per. No.</u>	<u>Basic Pay</u>	<u>Total Service</u>	<u>NPS Pension</u>	<u>Pension if under Old Pension Scheme</u>
R.Ramachandran	21048/9728	30500	13y/05m/01d	2417/- No DR	15,250/- +DR
K.Bhaskar Rao	101755	34300	15y/06m/16d	2506/- No DR	17,150/- +DR
S. Sivasankaran	881916	56900	17y/06m/11d	4900/- No DR	28,450/- +DR

From the above it is now amply clear that the NPS Employees despite their contribution during their entire service period are getting only a very meager pension when compared to the employees governed under old pension scheme.

8. Considering all the above serious development and the bitter experience of returns from the NPS, the entire Central Government employees and State Government Employees constituted a Joint Forum of Restoration of Old Pension Scheme (JFROPS) under the banner of NJCA. A National Convention of JFROPS was held at Delhi on the 21st of January 2023 where in a declaration was adopted demanding the following:-

- (1) To withdraw the National Pension System implemented to the employees who are recruited on or after 01/01/2004 and to bring them all under the coverage of old pension scheme under CCS(Pension) Rules1972.
- (2) To implement the GPF scheme to the employees who are recruited on or after 01/01/2004 by depositing the accumulated employee's contribution along with the returns to the GPF Account of the employees.

9. The Declaration was forwarded to the Cabinet Secretary, Government of India. A copy of the same is enclosed herewith for your kind ready reference which is also self-explanatory.

**JOINT FORUM FOR RESTORATION OF OLD PENSION SCHEME
(NJCA)**

4, State Entry Road New Delhi - 110055.

DECLARATION

Declaration on "SCRAP NPS" and "RESTORE THE DEFINED OLD PENSION SCHEME" adopted by the National Convention on "Scrap NPS" and "Restore the defined Old Pension Scheme" held at New Delhi on the 21st of January 2023

The National Convention on "**SCRAP NPS**" and "**RESTORE THE DEFINED OLD PENSION SCHEME**" held at New Delhi on the 21st day of January 2023 hereby adopts the present declaration on the aim and purpose of this historic convention with the ultimate objective to strive for Scrapping the National Pension System and to restore the defined Old Pension Scheme to the Central Government Employees, Employees of Various Autonomous Bodies and Authorities, State Government Employees, Para Military Forces, and Teachers etc.

The National Convention believes that the experience of 18 years has fully demonstrated the truth that the National Pension System implemented by the Government of India unilaterally during the year 2003 for those Central Government Employees recruited on or after 01.01.2004 and subsequently by various State Governments, Autonomous Bodies and authorities, etc. has deprived Social Security to the Retiring Employees and has violated the following written assurance given by the Government of India in the Standing Committee meeting of the National Council JCM held on 14.12.2007. The relevant portion of the minutes of the meeting is given below.

"Under the NPS, pension system of the employees who entered government service prior to 01.01.2004 is not altered in any way hence, the NPS has no implication for this category of employees. For employees who has entered w.e.f. 01.01.2004 are not likely to be worse off vis-à-vis the current pension system in force, as the replacement rate would match to the present one. Thus, NPS is a win-win situation for employees and the government."

However the above written assurance of the Government of India has been clearly violated which is evident from the following table/illustration wherein it is clearly proved that the pension under NPS is not at all matching with the Pension rate under the Old Pension Scheme.

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From the above it is now amply clear that the NPS Employees despite their contribution during their entire service period are getting only a very meager pension when compared to the employees governed under old pension scheme.

Old Pension Scheme under CCS(Pension) Rules 1972 (at present CCS(Pension) Rules 2021

The old Pension Scheme is a Defined Benefit Scheme. Employees who have put in 10 years minimum qualifying service are eligible for Pension. 50% of the last pay drawn is granted as monthly pension subject to a minimum guaranteed pension of Rs.9000/- per month + DR increase. Out of this monthly pension an amount equal to 40% of the Pension can be commuted while on superannuation (i.e. can be withdrawn in advance and which will be recovered and restored back after 15 years) and can get a lump-sum payment in advance. After commutation, the residual pension and DR on full pension will be paid for 15 years. If the Pensioner dies before 15 years, then there is no need for repayment of the balance commuted pension. Apart from this the Pension increases after 80 years of age by 20%, 30% after 85, 40% after 90, 50% after 95 and 100% after 100 year of age. Whenever pay scales of the employees are revised by the Pay Commissions, the Pension also are simultaneously revised. Under this scheme Family pension is granted for spouses (Wife/Husband), unmarried/widowed/divorced daughters and crippled son/daughter who is not able to earn his/her livelihood. An employee who becomes medically unfit and boarded out from service are entitled for invalid pension and gratuity and employee who are crippled due to accident are eligible for extraordinary pension. Payment of gratuity or commutation amount do not attract any income Tax.

New Pension System/National Pension System(NPS – why employees oppose NPS)

The New Pension Scheme which is now called as National Pension system is not a Defined benefit scheme. However it is a Defined contributory Scheme. While the contribution is defined, the benefit is not defined. It is uncertain. However under the old Pension Scheme there is no contribution from the employees and the benefits available in the old Pension Scheme like Pension, commutation and its restoration, enhancement of pension after 80 years etc., are well defined. The Government of India by an executive order on 22/12/2003 introduced NPS w.e.f. 01/01/2004. Subsequently during the year 2013 the PFRDA Act 2013 was passed in the parliament. Legally it came into effect from 01/02/2014 through a Gazette notification, which means legally the NPS has come in to force only w.e.f. 31/01/2014. However as mentioned above it was given effect 01/01/2004 by Executive Instructions.

In accordance with the NPS the employees have to contribute 10% of basic pay + DA and Government also contributes an equal amount as matching grant. However subsequently the Government has increased its contribution to 14 percent. The total amount is distributed to three Pension Fund Managers of LIC, SBI & UTI. They invest 15 percent in share market and 85 percent in bonds, both Government and private. In the NPS there is no guarantee for the returns on Investments. There is a risk of loss of principle element also. The employee at the time of retirement on attaining the superannuation age, 60 yrs., in the case of Central Government Employees, a sum equal to 60 percent of the total available amount is given to the employee / retiree. Remaining 40 percent has to be invested in annuities and the retiree is given option to choose the company in which he/she can invest in annuity. This 40 percent investment of pension wealth in annuities is mandatory. In case an employee retires voluntarily from service before attaining 60 years of age, he will also be paid only 60 percent of pension wealth and balance 40 percent of pension wealth will be invested in annuities. For all other exit from service, the employee will get 20 percent and 80 percent has to be invested in an annuity for pension.

Though it is stated that this 40 percent or 80 percent does not attract any Tax to the actual amount of investment, 18 percent GST is imposed. A comparative statement as given above on pension of the recently retired NPS employees under the National Pension System(NPS), and in case they are in the old pension scheme, what pension they must have received has given a clear picture of how the NPS employees are being discriminated and left to the mercy of the market.

Pension is a Fundamental Right of the Employees

The historic judgement, delivered on 17.12.1982 by the 5 Member Bench of the Hon'ble Supreme Court of India, consisting of Hon'ble Chief Justice. V.D.Chandrachud, Hon'ble Mr. Justice V.D.Tulzaprukar, Hon'ble O.Chinnappa Reddy and Hon'ble Justice M. Baharul Islam, declared as follows in the case treated as Writ Petition Nos.5939-41 under Article 32 of the Constitution of India, known as D.S.Nakra and others Vs. Union of India has established that Pension is a fundamental right of the Government Employees.

"Para 31: from the discussion three things emerge (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character, because they enacted in exercise of powers conferred by the proviso to Art. 309 and Clause(5) of Art. 148 of the Constitution, (ii) that pension is not an ex-gratia payment, but it is a payment for the past service rendered, and (iii) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age, they would not be left in the lurch."


Appeal to the Government of India and State Governments

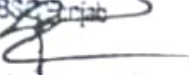
In view of all the above mentioned facts, this National Convention on **"SCRAP NO GUARANTEE NPS"** and **"RESTORE THE DEFINED GUARANTEED OLD PENSION SCHEME"** held at New Delhi on the 21st day of January 2023 on behalf of the entire Central Government Employees, Employees of Various Autonomous bodies and authorities, State Government Employees, Para military Forces and Teachers, etc appeals to the Govt. of India and the Various State Governments to consider the following genuine demands:

- (1) To withdraw the National Pension System implemented to the employees who are recruited on or after 01/01/2004 and to bring them all under the coverage of old pension scheme under CCS(Pension) Rules 1972.
- (2) To implement the GPF scheme to the employees who are recruited on or after 01/01/2004 by depositing the accumulated employees contribution along with the returns to the GPF Account of the employees.

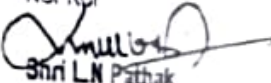
Action Programmes

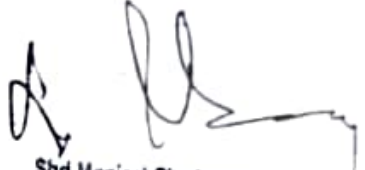
This convention accordingly formulates the following action programmes in the coming days by all the organizations who are in the field fighting relentlessly for withdrawal/Scrapping of NPS and for restoration of Old Pension Scheme.

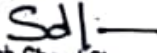

Shri Jasvir Singh Talwara
Member, National Convener Member
PBGZ Punjab


Shri P.U. Khadse
Member, President NFPE

Shri B.P. Singh Rawat
Member, National President
NOFRUF


Shri LN Pathak
Zonal Secretary A/PF


Shri Manjeet Singh Patel
Member, President/Central &
State Govt. Emp. Confederation


Dr. Dinesh Chand Sharma
Member, State President,
U.P. Prathmik Shikshak Sangh

In view of all the above justification the Staff Side of the National Council (JCM) is of the firm view that any modification / improvement of the NPS in accordance with the Terms of Reference given to the Committee is not going to be of any help to the NPS employees whose right for a dignified and decent old age retired life has become an un-certainty. Therefore the only solution is to scrap the No guarantee NPS and to Restore the defined and guaranteed Old Pension Scheme under the CCS Pension Rules 1972 to those Central Government Employees who are recruited on or after 01/01/2004. We therefore appeal to the Committee to recommend accordingly.

Before we conclude we draw the kind attention of the following historical judgment of the Hon'ble Supreme Court which has upheld pension as a fundamental right of the Employees

Judgment, delivered on 17.12.1982 by the 5 Member Bench of the Hon'ble Supreme Court of India, consisting of **Hon'ble Chief Justice. V.D.Chandrachud, Hon'ble Mr. Justice V.D.Tulzaprukar, Hon'ble O.Chinnappa Reddy and Hon'ble Justice M. Baharul Islam,** declared as follows in the case treated as Writ Petition Nos.5939-41 under Article 32 of the Constitution of India, known as D.S.Nakra and others Vs. Union of India has established that Pension is a fundamental right of the Government Employees.

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With all the above submissions we reiterate our following two demands for the favorable and sympathetic consideration of the Committee.

- (1) To withdraw the National Pension System implemented to the employees who are recruited on or after 01/01/2004 and to bring them all under the coverage of Old Pension Scheme under CCS(Pension) Rules 1972.
- (2) To implement the GPF scheme to the employees who are recruited on or after 01/01/2004 by depositing the accumulated employees contribution along with the returns to the GPF Account of the employees.

Hope that the Committee will dispassionately and judiciously consider the genuine concern of the Central Govt. Employees and State Government employees/Paramilitary Forces/Autonomous Institutions/Union Territories etc and recommend for scrapping the NPS and restoration of the defined and guaranteed Old Pension Scheme under the CCS(Pension) rules 1972.

It is also requested that the Committee will have further discussion with us before finalizing its recommendations/report.

Thanking you,

Yours faithfully,


(Shiva Gopal Mishra)
Secretary