

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

LEARNING OBJECTIVES

In this Chapter, the students come to know the

- ◆ Operations of Employees' Provident Fund Scheme
- ◆ Operations of the Employee's Pension Scheme
- ◆ Operations of the Deposit-Linked Insurance Scheme
- ◆ Obligations of the employer and employee towards PF accounts
- ◆ Other provisions of the Act such as powers of the Central Government, determinations of moneys due from employers etc.

Every worker wants security and maintenance for old age. The Provident Fund Act, 1925 deals with the provident funds relating to only Government, Railways and local authorities. So it was considered desirable to introduce a Provident Fund Scheme for the industrial workers.

4.1 Introduction

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') extends to the whole of India except the State of Jammu & Kashmir. It seeks to provide for the institution of provident funds, family pension funds and deposit linked insurance funds for employees in factories and other establishments. The Act is at present applicable to 173 industries and classes of establishments of Schedule I.

Subject to the exceptions contained in Section 16 (which we shall discuss later on), this Act applies to the following entities, namely :

- (a) every establishment which is a *factory engaged in any industry specified in Schedule I* and in which 20 or more persons are employed ; and
- (b) any *other establishment which employs 20 or more persons* or class of such establishments which the Central Government may, by notification in Official Gazette specify in the behalf.
- (c) *The Central Government* may, after giving not less than 2 months' notice of its intention to do so, *apply the provisions of this Act to any establishment* with less than 20 persons

in the employment.

- (d) Notwithstanding anything mentioned above or in Sub-section (1) of Section 16, where *it appears to the Central Provident Fund Commissioner*, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment, have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official, Gazette, apply the provision of this Act to the establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

An establishment to which this Act applies must continue to be governed by this Act, even if the number of persons employed therein falls at any time below 20.

- (e) The Ministry of Labour & Employment through *Notification No. S.O. 30 (E), dated 8th January, 2011* specifies that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 shall also apply to "Municipal Councils and Municipal Corporations constituted under sub-clauses (b) & (c) of clause (1) of Article 243Q of the Constitution of India.

4.2 Definitions (Section 2)

In this Act, unless the context otherwise requires :

- (a) "*Appropriate Government*" means :

(i) in relation to *an establishment belonging to, or under the control of Central Government* or in relation to an establishment connected with 'a railway' company, a major port, a mine or an oilfield or a controlled industry, or in relation to an establishment having departments or branches in more than one State, the Central Government ; and

(ii) in relation to any other establishment, the State Government.

- (b) "*Basic wages*" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concessions ;

(ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment ;
or

(iii) any presents made by the employer.

Emoluments which are paid to all the employees of a concern while on duty shall constitute

4.3 Business Laws, Ethics and Communication

basic wages , whereas such emoluments which are paid to some of the employees of a concern, they do not form part of the basic wages. [*Burmah Shell Oil Storage & Distributing Co. of India Ltd. V. R.P.F.Commr.*(1981)2 LLJ 86 Del].

Production bonus and incentives wage is not the part of the basic wage. [*Bridge and Roof Co. v. U.o.I.*,AIR(1963) SC 1474]

(e) “Employer” means :

- (i) in relation to an *establishment which is a factory*, the owner or occupier of the factory including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as manager of the factory under clause (f) of Sub-section (I) of Section 7 of the Factories Act, 1948 the person so named ; and
 - (ii) in relation to *any other establishment*, the person who, or the authority which, has ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager or managing director, such manager, managing director or managing agent.
- (f) “Employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person, (i) employed by or through a contractor in or in connection with the work of the establishment ; (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentice Act, 1961 (52 of 1961), or under the standing orders of the establishment.

Whether a person is an employee or not, it rest on the relationship of master and servant [*Mysore State Coop.Printing Works v. R.P.F.Commr.*(1976)Lab IC 1307 Ker].

- (ff) “Exempted employee” means an employee to whom a Scheme would, but for the exemption granted under Section 17, have applied.
- (fff) “Exempted establishment” means an establishment in respect of which an exemption has been granted under Section 17 from the operation of all or any of the provisions of any Scheme, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein.
- (g) “Factory” means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power.
- (i) “Industry” means an industry specified in Schedule I, and includes any other industry added to the Schedule by notification under Section 4.
- (ie) “Manufacture” or “Manufacturing process” means any process for making, altering, repairing, ornamenting, finishing, packing, washing, cleaning, breaking up, demolishing, otherwise treating or adapting any, article or substance with a view to its use, sale, transport, delivery or disposal.

(k) "Occupier of a factory" means the person who has ultimate control over the affairs of the factory and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

Establishment to include all departments and branches (Section 2A) : If an establishment consists of different departments or has branches whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

Power to apply the Act to an establishment which has a common Provident Fund with another establishment (Section 3) : When an establishment covered by this Act has a common Provident Fund with another establishment immediately before the Act came into force, the Central Government has the power to direct through a notification in the Official Gazette, that the provisions of this Act shall also apply to that another establishment.

The Central Government has also the power, by virtue of Section 4, to add to Schedule I any other industry in respect of the employees whereof it is of the opinion that a provident fund scheme should be framed under this Act. Thereupon, the industry so added must be deemed to be an industry specified in Schedule I for the purposes of this Act. The addition is to be made through a notification in the Official Gazette and the notification is required to be laid before Parliament as soon as possible after issue.

Review of fundamentals

- ◆ *The EPF & Miscellaneous Provisions Act, 1952 provides for institution of provident fund, pension fund and deposit linked insurance fund for an employee in the establishments covered by it. This Act extends to the whole of India except Jammu & Kashmir. This Act applies to every establishment which is a factory engaged in any industry laid in schedule I and in which 20 or more persons are employed.*
- ◆ *Basic wages constitutes all emoluments which are earned by an employee as per the terms of the contract and which are paid /payable in cash to him. However ,it doesnot'include- (i) Cash value of any food concession(ii) D.A (iii) HRA (iv) overtime allowance.*
- ◆ *Employer means-(i) in relation to an establishment which is a factory, the owner or occupier of the factory or the legal, and (ii) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment, .*
- ◆ *Employee includes any person –(i) who is employed for wages in any kind of work, manual or otherwise, in or in connection with work of an establishment, and (ii) who gets his wages directly or indirectly from the employer,*

4.3 Employees' Provident Funds Scheme, 1952 (Section 5)

The Central Government may, by notification in the Official Gazette, frame a scheme to be called Employees' Provident Funds Scheme, 1952 for the employees or class of employees of

4.5 Business Laws, Ethics and Communication

establishments to which the Act applies. It may also specify the establishments or class of establishments to which the said scheme is to apply. As soon as may be after the framing of scheme, a Fund must be established in accordance with provisions of this Act and the Scheme.

The fund shall vest in and be administered by Central Board of trustees constituted under Section 5A by the Central Government (to be discussed later on).

Subject to the provisions of the Act, the Scheme framed under Section 5(1) may provide for all or any of the matters specified in Schedule II [Section 5 (1B)].

Schedule II [See Section 5(1B)]

Matters for which provision may be made in a Scheme

1. The employees or class of employees who shall join the Fund and the conditions under which employees may be exempted from joining the Fund or from making any contribution.
2. The time and manner in which contribution shall be made to the fund by employers and by, or on behalf of employees (whether employed by him directly or by or through a contractor) the contribution which an employee may, if he so desires, make under Section 6, and the manner in which such contributions may be recovered.
- 2-A The manner in which employees' contributions may be recovered by contractors from employees employed by or through such contractors.
3. The payment by the employer of such sums of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made.
4. The constitution of any Committee for assisting any Board of Trustees.
5. The opening of regional and other offices of any Board of Trustees.
6. The manner in which accounts shall be kept, the investment of moneys belonging to the fund in accordance with any directions issued or conditions specified by the Central Government, the preparation of the budget, the audit of accounts and the submission of reports to the Central Government or to any specified State Government.
7. The conditions under which withdrawal from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.
8. The fixation, by the Central Government in consultation with the Board of Trustees concerned, of the rate of interest payable to members.
9. The form in which an employee shall furnish particulars about himself and his family whenever required.
10. The nomination of person to receive the amount standing to the credit of member after his death and the cancellation or variation of such nomination.

11. The registers and records to be maintained with respect to employees and the returns to be furnished by employees (or contractors).
12. The form or design or any identity card, token or disc for the purpose of identifying an employee, and for the issue, custody and replacement thereof.
13. The fees to be levied for any of the purposes specified in this Schedule.
14. The contraventions or defaults which shall be punishable under Sub-section (2) or Section 14.
15. The further powers, if any, which may be exercised by inspectors.
16. The manner in which accumulations in any existing provident fund shall be transferred to the Fund under Section 15 and the mode of valuation of any assets which may be transferred by the employers in this behalf.
17. The conditions under which a member may be permitted to pay premium on life insurance from the Fund.
18. Any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

The above mentioned Scheme may provide that any of its provisions shall be effective either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.

[Note: (i) The Central Government through *Notification No. G.S.R. 148, dated 3rd September, 2010* has amended the Employees' Provident Funds Scheme, 1952 by the Employees' Provident Funds (Amendment) Scheme, 2010 laying down special provisions in respect to the International worker.

(ii) The Ministry of Labour and Employment through *Notification No. G.S.R. 25(E), dated 15th January, 2011* made Employees' Provident Funds (Amendment) Scheme, 2011. According to which interest shall not be credited to the account of a member from the date on which it has become inoperative account given in Paragraphs 60(5) & 72(6) of the Employees' Provident Funds Scheme, 1952.

These amendments given here are for the knowledge purpose of the students]

4.4 Employees' Pension Scheme, 1995 (Section 6A)

Before the introduction of this new Pension Scheme, social security measures available to employees were inadequate for they did not provide for monthly pension to members on superannuation, widow pension on death of employees with representation, children pension or disablement benefits. To fill the lacunae in the old scheme, the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance 1995 was promulgated by the President of India, dated 5-1-1996 amending the Act w.e.f. 16-11-1995 conferring power on the Central Government to frame a suitable scheme incorporating provisions for superannuation pension, retiring pensions permanent disablement pension to employees and

4.7 Business Laws, Ethics and Communication

widow or widow's pension, children pension or orphan pension payable to beneficiaries of such employees in the event of death. The Amendment Ordinance, 1995 was repealed by Second Ordinance of 1996, which was again repealed by the Third Ordinance of 1996, which was subsequently repealed by the E.P.F. & M.P. (Amendment) Act, 1996 with retrospective effect from 16-11-1995. The scheme shall apply to all employees who were covered by the Family Pension Scheme and also to new members.

- (1) The Scheme called the Employees' Pension Scheme is to provide for,—
 - (a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and
 - (b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.
- (2) Notwithstanding anything contained in Section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme:
 - (a) such sums from the employer's contribution under Section 6, not exceeding eight and one-third per cent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;
 - (b) such sums as are payable by the employers of exempted establishments under Sub-section (6) of Section 17;
 - (c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
 - (d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.
- (3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme, from the Pension Fund.

The pension fund shall vest in and be administered by the Central Board of Trustees.

The Pension Scheme may provide for all or any of the following *matters specified in Schedule III*.

Matters for which Provision may be made in the Pension Scheme (Schedule III)

1. The employees or class of employees to whom the Pension Scheme shall apply.
2. The time within which the employees who are not members of the Family Pension Scheme under Section 6A as it stood before the commencement of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.
4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefit of their past service under Section 6A as it stood before the commencement of the amending Ordinance.
5. The regulation of the manner in which, the period of service for which no contribution is received.
6. The manner in which employees' interest will be protected against default in payment of contribution by the employer.
7. The manner in which the accounts of the pensions fund shall be kept and investment of moneys belonging to pension fund to be made subject to such pattern of investment as may be determined by the Central Government.
8. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.
9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.
10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits of the employees.
11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of return relating thereto.
12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.
13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.
14. Any other matter which is to be provided for in the Pension Scheme or which may be, necessary or proper for the purpose of implementation of the Pension Scheme."

Employees Pension Fund

- (1) From and out of the contributions payable by the employer in each month under Section 6 of the Act or under the rules of the Provident Fund of the establishment which is exempted either under clauses (a) and (b) of Sub-section (1) of Section 17 of the Act or whose employees are exempted under either paragraph 27 or paragraph 27A of the Employees' Pension Fund Scheme, 1952 a part of contribution representing 8.33 per cent of the Employees' pay shall be remitted by the employer to the Employees' Pension Fund within fifteen days of the close of every month by a separate bank draft or cheque on account of the Employees' Pension Fund contribution in such manner as may be specified in this behalf by the Commissioner. The cost of the remittance, if any, shall be borne by the employer.
- (2) The Central Government shall also contribute at the rate of 1.16 per cent of the pay of

4.9 Business Laws, Ethics and Communication

the members of the Employees' Pension Scheme and credit the contribution to the Employees' Pension Fund :

Provided that where the pay of the member exceeds rupees six thousand five hundred per month, the contribution payable by the employer and the Central Government be limited to the amount payable on his pay of rupees six thousand five hundred only. [G.S.R.383(E), dated 21st May, 2001]

(3) Each contribution payable under sub-paragraphs (1) and (2) shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

(4) The net assets of the Family Pension Scheme, 1971 shall vest in and stand transferred to the Employees' Pension Fund.

Payment of contribution

(1) The employer shall pay the contribution payable to the Employees' Pension Fund in respect of the member of the Employees' Pension Fund employed by him directly or by or through a contractor.

(2) It shall be the responsibility of the principal employer to pay the contributions payable to the Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

[Note: The Central Government through *Notification* Nos. G.S.R. 149, dated 3rd September, 2010 has amended the Employees' Pension Scheme, 1995 by the Employees' Pension (Amendment) Scheme, 2010 laying down special provisions in respect to the International worker.

This amendment is for the knowledge purpose of the students]

4.5 Employees' Deposit-Linked Insurance Scheme, 1976

(1) Section 6C of the Employees' Provident Funds Act provides (Amendment Act of 1976), that the *Central Government may, by notification in the Official Gazette, frame a scheme* to be called the Employees' Deposit-linked Insurance Scheme, 1976 for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which the Act applies [Section 6C(2)].

The Central Government under the Act (Employees' Provident Funds and Miscellaneous Provisions Act, 1952) framed the Employees' Deposit-linked Insurance Scheme, 1976 *vide* its Notification dated 28th July, 1976. The Insurance Scheme came into force on the 1st day of August, 1976.

(2) Soon after the framing of the above scheme, there was *established a Deposit-linked Insurance Fund (called Insurance Fund)*. The employer shall pay into the fund from time to time in respect of his employees an amount not exceeding 1% of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) as the Central Government may, by notification in the Official Gazette, specify [Section 6(2)].

(3) The employer shall also pay into the fund such further sum of money not exceeding 1/4th of the contribution which he is required to make as the Central Government may, from time to time, determine. This payment is required to be made to meet all the *expenses in connection with the administration of the Employees' Deposit-linked Insurance Scheme* other than the expenses towards the cost of any benefits provided by or under that scheme [Section 6C(4)(a)].

(4) The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme [Section 6C(5)].

(5) The Insurance Scheme may provide for all or any of the *matters specified in Schedule IV* [Section 6C(7)].

(6) The Insurance Scheme may provide that any of its *provisions shall take effect either prospectively or retrospectively* on such date as may be specified in this behalf in that Scheme. [Section 6C(7)].

(7) The Central Government may by notification in the Official Gazette *add to, amend or vary either prospectively or retrospectively, the Scheme* (Section 7).

Notification : August 26, 1997.

The Provident Fund claims complete in all respects submitted along with the requisite documents shall be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

Certain amendments were made in this scheme in September, 1992 to provide for periodical submission of certain returns by the employer and for punishment for failure to comply with the same.

Employees' Deposit Linked Insurance (Amendment) Scheme, 2010

As per the Notification No. G.S.R.523(E), dated 18th June, 2010 amendment made in Employees' Deposit Linked Insurance Scheme, 1976 by the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010, by the Ministry of Labour and Employment in Paragraph 22, Sub-paragraph (1). This modified Employees' Deposit Linked Insurance (Amendment) Scheme, 2010, Substituted the provision by-

"The Central Government amended the Employees' Deposit Linked Insurance Scheme, 1976 by Employees' Deposit Linked Insurance (Amendment) Scheme, 2010. According to which on the death of an employee, who is member of the Fund or of a provident fund exempted under section 17 of the Act, the person entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the fund or a provident fund exempted under

section 17 of the Act, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, except where the average balance exceeds rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of fifty thousand subject to a ceiling of Rupees one lakh."

This above provision says that the EDLI amount is equal to the average balance of your PF in the last 12 months or the overall balance, whichever is less. But if the balance exceeds ₹ 50,000, your nominee will get ₹ 50,000 plus 40% of the excess balance up to a total of ₹ 1 lakh.

Employees' Deposit Linked Insurance (Amendment) Scheme, 2011

As per the Notification No. G.S.R. 9(E), dated 8th January, 2011, the Central Government revised the benefits provided to the employees under the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010. Under the revised scheme, the benefit provided in case of death of an employee who was member of the scheme at the time of the death, their family will get 20 times of the average wages of the last 12 months of the member. According to the revised scheme, maximum benefits under the scheme will now be ₹ 1,30,000/-, as the wage ceiling upto which contribution can be paid under the scheme is ₹ 6500/-.

4.6 Management of the Schemes

Following authorities have been constituted for proper and effective management of the schemes framed under the Act-

- I. **Central Board (Section 5A)** : The Central Government may, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following persons, as members, namely :
 1. (a) a *Chairman and a Vice-Chairman* to be appointed by the Central Government;
(aa) the *Central Provident Fund Commissioner, ex-officio*;
(b) not more than *fifteen persons appointed by the Central Government* from amongst its officials;
(c) not more than *fifteen persons, representing Governments* of such State as the Central Government may specify in this behalf, appointed by the Central Government;
(d) *ten persons representing employers* of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf; and
(e) *ten persons representing employees* in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employees as may be recognised by the Central Government in this behalf.
 2. The terms and conditions subject to which a member of the Central Board may be

appointed and the time, place and procedure of the meetings of the Central Board shall be such as may be provided for in the Scheme.

3. The Central Board, shall [subject to the provisions of Section 6A (and Section 6C)] administer the fund vested in it in such manner as may be specified in the Scheme.
4. The Central Board shall perform such other functions as it may be required to perform by or under any provisions of the Scheme (the Family Pension Scheme and the Insurance Scheme).
5. The Central Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may, after consultation with the Comptroller and Auditor-General of India, specify in the Scheme.
6. The accounts of the Central Board shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Central Board to the Comptroller and Auditor-General of India.
7. The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and inspect any of the offices of the Central Board.
8. The accounts of the Central Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in his behalf together with audit report thereupon shall be forwarded to the Central Board which shall forward the same to the Central Government alongwith its comments on the report of the Comptroller and Auditor-General.
9. It shall be the duty of the Central Board to submit also to the Central Government an annual report of its work and activities and the Central Government shall cause a copy of the annual report, the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the Central Board thereon to be laid before each House of Parliament.

II. Executive Committee (Section 5AA) : The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, an Executive Committee *to assist the Central Board* in the performance of its functions.

The Executive committee shall *consist* of the following persons as members, namely :

- (a) a *Chairperson, the secretary to the Government of India from the Ministry of Labour and Employment* appointed by the Central Government.;
- (b) *two persons Additional secretary to the Government of India and the Financial Advisor from othe Ministry of Labour and Employment* appointed by the Central Government.
- (c) *three persons representating the Governments of the States(presently are the representative of the Government of the Assam, Rajasthan and of the Tamil Nadu)* appointed by the Central Government.
- (d) *three persons representing the employers* of the establishments to which the scheme

4.13 Business Laws, Ethics and Communication

applies appointed by the Central Government.

- (e) *three persons representing the employees in the establishments to which the scheme applies appointed by the Central Government..*
- (f) *the Central Provident Fund Commissioner of Employees' Provident Fund Organisation.*

[This reconstitution of the Executive Committee is as per the Notification no. S.O.1045(E) , dated 13th May,2011 by the Ministry of Labour and Employment]

The terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee and the time, place and procedure of the meetings of the Executive Committee shall be such as may be provided for in the Scheme.

III. State Board (Section 5B) : It was stated above that the Central Government may constitute Trustees for a State Board in consultation with the Government of that State. The State Board shall *exercise such powers and perform such duties as the Central Government may assign* to it from time to time.

Board of Trustees to be body corporate (Section 5C) : The above Central Board or the State Board shall be a body corporate under the name specified in the notification constituting it having perpetual succession and a common seal.

IV. Appointment of Officers (Section 5D) : The Central Government shall appoint a *Central Provident Fund Commissioner* who shall be the Chief Executive Officer of the Central Board. He shall be subject to the general control and superintendence of that Board.

The Central Government may also *appoint a Financial Adviser and Chief Accounts Officer* to assist the Central Provident Fund Commissioner in the discharge of his duties.

The Central Board may appoint subject to the maximum *scale of pay*, as may be specified in the Scheme as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners and Assistant Provident Fund Commissioners as it may consider necessary for the efficient administration of the Scheme.

The aforesaid *appointments* carrying a scale of pay equivalent to Group 'A' or Group 'B' posts under the Central Government must be *made only after consultations with Union Public Service Commission*. However, such consultation is unnecessary in regard to any such appointment :

- (a) for a period not exceeding one year; or (b) if the person to be appointed is at the time of his appointment : (i) an I.A.S. Officer, or (ii) in the Service of the Central Government or State Government or the Central Board in Group A or Group B post.

The State Board may, with the approval of the State Government concerned appoint such staff as it may consider necessary.

The *method of recruitment, salary and allowances*, discipline and other conditions of service of the aforesaid Commissioner and the Financial Adviser and Chief Accounts Officer shall be such as may be prescribed by the Central Government. Such salary and allowances must be paid out of the Fund.

The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner, and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay.

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

Acts and proceedings of the Central Board or its Executive Committee or State Board not to be invalidated on certain grounds (Section 5DD) : No Act done or proceeding taken by the Central Board or the Executive Committee constituted under Section 5AA or the State Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Central Board or the Executive Committee or the State Board, as the case may be.

Delegation (Section 5E): The Central Board may delegate to the Executive Committee or to the Chairman of the Board or to any of its Officers and a State Board may delegate to its Chairman or to any of its Officers such of its powers and functions under this Act as it may deem necessary for the efficient administration of the Scheme. This delegation may be subject to such conditions and limitations, if any, as the said Board may specify.

Contribution and matters which may be provided for in Scheme (Section 6) : The employees' contribution to the fund shall be 10% of the basic wage, dearness allowance and retaining allowance (if any). An employee can at his will contribute beyond 10% if the scheme makes provision therefor subject to the conditions that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section. This rule will prevail irrespective of whether the employer employs the person directly or through contractor.

According to the *first proviso* to the Section the Central Government may, however, raise the aforesaid percentage of contribution from 10% to 12% in respect of any establishments. It may do so after making such enquiries as it deems fit.

According to the *second proviso* if the amount of any contribution involves fraction of a rupee, the Scheme may provide for rounding off such fraction to the nearest rupee, half of a rupee or a quarter of rupee.

It may be noted that the *dearness allowance mentioned above shall be deemed to include also*

the cash value of any food concession allowed to the employees; also that “*retaining allowance*” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working for retaining his service.**[Explanation 1 and 2 to Section 6]**

The Ministry of Labour and Employment vide its letter no. R-11018/1/1010.SS-II, dated 14/3/2012 had declared rate of interest to the Employees’ Provident Fund members under the Scheme to be credited @ 8.25% for the Year 2011-2012.

Note: Students may note that in view of the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Act, 1996 coming into force from 16th November, 1995, some structural changes have been introduced in the Act. The Amendment Act, 1996 was assented by the President of India on 16th August, 1996. With reference to the Pension Scheme, a new Section 6A has been substituted for earlier Sections 6A and 6B. Henceforth for the words “family pension” the word “pension” shall be substituted.

4.7 Other Provisions

Determination of moneys due from employer (Section 7A) : (1) Section 7A of the Act gives *power to the authorities* mentioned therein *i.e.*, Central PF Commissioner, Deputy PF Commissioner or any Regional PF Commissioner *to determine the amount due* from an employer under the provisions of the Act and the Scheme. This involves decisions on various points of quasi-judicial nature, *viz.*

- (i) amount due as contribution.
- (ii) the date from which the same is due.
- (iii) the administrative charges.
- (iv) amount to be transferred under Sections 15 or 17 of the Act.
- (v) any other charges payable by the employer under the Act.

(2) The authorities have been given *power to conduct such enquiry* as may be deemed necessary and for this they have been granted powers as are vested in a Court.

(3) An order must not be made unless the employer concerned is given a *reasonable opportunity of representing* his case (Sub-section 3).

(4) Where the employer, employee or any other person required to attend the inquiry under Sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may *decide the applicability of the Act or determine the amount due* from any employer, as the case may be, *on the basis of the evidence adduced* during such inquiry and other documents available on record.

(5) Where an *order* under Sub-section (1) is *passed against an employer ex parte*, he may, within three months from the date of communication of such order, apply to the officer for

setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry.

(6) *No such order shall be set aside* merely on the ground that there has been an irregularity in the service of show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. However, where an appeal has been preferred under this Act against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that appellant has withdrawn the appeal, no application shall lie under this Sub-section for setting aside the *ex parte* order [Section 7A(4)].

(7) *No order passed under this section shall be set aside* on any application under Sub-section (4), unless *notice thereof has been served* on the opposite party.

Thus, the scope of enquiry and manner of conducting the enquiry is at the discretion of the authority. As the proceedings shall be quasi-judicial and shall vitally affect the rights of the parties the principle of natural justice must be strictly followed in deciding the dispute in the proceeding. The employer is entitled to a reasonable opportunity of being heard. The order made under this section shall be final and will not be called in question in any Court of law.

Review of orders passed under Section 7A (Section 7B)

(1) Any person aggrieved by an order made under Sub-section (1) of Section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order, may apply for a review of that order, to the officer who passed the order.

(2) Such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(3) Every application for the aforesaid review shall be filed in such form and manner and within such time as may be specified in the Scheme; and

(4) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

Provided that :

- (a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and
- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under Section 7A.

Determination of escaped amount (Section 7C) : Where an order determining the amount due from an employer under Section 7A or Section 7B has been passed and if the officer who passed the order :

- (a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;
- (b) has, in consequence of information in his possession, reason to believe that any amount to be determined under Section 7A or Section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer.

He may, *within a period of five years* from the date of communication of the order passed under Section 7A or Section 7B, re-open the case and pass appropriate order re-determining the amount due from the employer in accordance with provisions of this Act.

However, no order re-determining the amount due from the employer shall be passed under this section unless the employer is *given a reasonable opportunity of representing his case*.

Review of fundamentals

- ◆ ***The EPF & Miscellaneous Provisions Act provides institution of following schemes for the welfare of the employees in the establishments covered by it: Employees' Provident Funds Scheme, Employees' Pension Scheme, and Employees' Deposit Linked Insurance Scheme***
- ◆ ***Provident Fund Scheme: Here an employer shall contribute to the fund 10 % of the basic wages, dearness allowance and retaining allowance, if any for the time being payable to each of the employees.***
- ◆ ***Employees' Pension Scheme: Introduced in 1996 with retrospective effect from 16th November 1994. It is framed to provide- (i) superannuation pension, retiring pension or permanent total disablement pension to the employees ; (ii) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.***
- ◆ ***Employees' Deposit-linked Insurance Scheme provides life insurance benefits to the employees.***
- ◆ ***For effective management of these Schemes, following authorities is constituted: I. Central Board, II. Executive Committee, III. State Board, IV. Officers.***

Employees' Provident Fund Appellate Tribunal (Section 7D) : The Central Government may, by notification in the Official Gazette, *constitute one or more Appellate Tribunals* to be

known as the Employees' Provident Funds Appellate Tribunal *to exercise the powers and discharge the functions conferred on such Tribunal by this Act* and every such Tribunal shall have *jurisdiction* in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

A Tribunal shall *consist of one person only* to be appointed by the Central Government.

A person shall not be *qualified for appointment as the Presiding Officer* of a Tribunal (hereinafter referred to as the Presiding Officer), unless he is, or has been, or is qualified to be a Judge of a High Court; or a District Judge.

Sections 7-E to 7-I provides for the terms and conditions of service of the Presiding Officer and other Staff of the Appellate Tribunal.

Procedure of Tribunals (Section 7J) : A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings.

A Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the officers referred to in Section 7A and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code and the Tribunal shall be deemed to be a Civil Court for all the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Right of appellant to take assistance of legal practitioner and of Government, etc. to appoint presenting officers (Section 7-K) : A person preferring an appeal to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

The Central Government or a State Government or any other authority under this act may authorise one or more legal practitioner or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before a Tribunal.

Orders of Tribunal (Section 7-L) : A Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

Amendment of order : A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under Sub-section (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal.

However, an amendment which has the effect of enhancing the amount due from, or otherwise, increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a

reasonable opportunity of being heard. A Tribunal shall send a copy of every order passed under this section to the parties to the appeal. Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law.

Deposit of amount due on filing an appeal (Section 7-O) : No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in Section 7A.

The Tribunal may, however, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

Transfer of certain applications to Tribunals (Section 7-P) : All applications which are pending before the Central Government under Section 19A, before its repeal shall stand transferred to a Tribunal exercising jurisdiction in respect of establishments in relation to which such applications had been made as if such applications were appeals preferred to the Tribunal.

Interest payable by the employer (Section 7-Q) : The employer shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment. However, the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank.

Review of fundamentals

- ◆ ***The Central Government may constitute one/more Appellate Tribunal to exercise and discharge the functions and have jurisdiction in respect of the establishments as may be specified in the notification constituting the Tribunal. It may be presided by only one person called as presiding officer and holding office for a term of five years or attains the age of sixty two years, which ever is earlier.***
- ◆ ***A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions , it have all the powers which are vested in the officers referred to in Section 7A and any proceeding before the Tribunal shall be deemed to be a judicial proceeding .***
- ◆ ***A Tribunal may, after giving the parties to the appeal, an opportunity of being heard pass an order and within five years from the date of its order may at any time amend any order passed by it.***

Mode of recovery of money due from employers (Section 8) : Any amount due from such employer as is specified in Section 8 may, if the amount is in arrear, be recovered in the manner specified in Sections 8B to 8G. For order of demand under Section 8, it is necessary that there should be a determination of the amount due, if the liability is disputed. An order under Section 7A(3) is a condition precedent to the making of a demand under Section 8 [A.T. Union (P.) Ltd. vs. RPF Commissioner].

(i) **Recovery of moneys by employers and contractors (Section 8A) :** The amount of

employers' and employees' contribution and any charges on the basis of such contribution for meeting the cost of administering the fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor. The recovery may be made by deduction from any amount payable by the Contractor. The contractor in his turn may recover from such employee the employee's contribution by deducting from the basic wage, dearness allowance, any retaining allowance (if any), payable to such employee. But the contractor cannot deduct the employer's contribution or the charges aforesaid from the total emoluments payable to the employee; nor can he otherwise recover such contribution or charges from such employee. This is true irrespective of whether there is any contract to the contrary.

(ii) **Issue of certificate to the Recovery Officer (Section 8B)** : Where any amount is in arrear under Section 8, the authorised officer may issue to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or as the case may be, the employer by one or more of the modes mentioned below :

- (a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;
- (b) arrest of the employer and his detention in prison;
- (c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer.

The attachment and sale of any property under this section shall, however, be first effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(iii) **Recovery Officer to whom certificate is to be forwarded (Section 8C)** : The authorised officer may forward the certificate referred to in Section 8B to the Recovery Officer within whose jurisdiction the employer :

- (a) carries on his business or profession or within whose jurisdiction the principal place of the establishment is situate; or
- (b) resides or any movable or immovable property of the establishment or the employer is situate.

Where an establishment or the employer has property within the jurisdiction of more than one Recovery Officer and the Recovery officer to whom a certificate is sent by the authorised officer :

- (a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or
- (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do, he may send the certificate or, where

4.21 Business Laws, Ethics and Communication

only a part of the amount is to be recovered, a copy of the certificate in the prescribed manner and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the establishment or the employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

(iv) **Stay of proceedings under certificate and amendment or withdrawal thereof (Section 8E)** : Notwithstanding that a certificate has been issued to the Recovery officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount and thereupon the Recovery Officer shall stay the proceeding until the expiry of the time so granted.

Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw as the case may be.

(v) **Other modes of recovery (Section 8F)** : Notwithstanding the issue of a certificate to the Recovery Officer under Section 8B, the Central Provident Fund Commissioner or any officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other person authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be :

Nothing in this sub-section shall, however, apply to any part of the amount exempt from attachment in execution of a decree of a Civil Court under Section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

The Central Provident Fund Commissioner or any other officer authorised by the Central

Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorised, he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him in the manner provided in Sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under Section 8B.

The Central Provident Fund Commissioner or the officer authorised by the Central Board in this behalf may apply to the Court in whose custody there is money belonging to the employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(vi) **Application of certain provisions of Income-tax Act (Section 8-G)** : The provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the tax (Certificate Proceedings) Rules, 1962, as in force, from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in Section 8 of this Act instead of the income-tax.

However, any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to an employer as defined in this "Act".

Review of fundamentals

- ◆ **Mode of recovery:** *Any amount due from an employer may be recovered in the manner specified in Sections 8B to 8G. The authorised officer may issue a certificate specifying the amount of arrears to the Recovery officer who shall proceed to recover the amount from the establishment or the employer by attachment and sale of movable/immovable property, arresting and detaining the employer and/or appointing a receiver.*
- ◆ **The authorised officer may grant time for the payment of the amount and thereupon the Recovery Officer shall stay the proceeding until the expiry of the time so granted.**
- ◆ **The other modes of recovery:** *The Central PF Commissioner /any other officer authorized by the Central Board may recover by any one or more of the following modes- Recovery from the person who owes money to the employer, recovery by*

application to court having custody of the money of the employer and /or recovery by distraint and sale of movable property.

Fund to be recognised under the Income-tax Act, 1961 (Section 9) : For the purposes of Income-tax Act, 1961, the Fund shall be deemed to be a recognised Provident Fund. Even if any provision of the Scheme under which the Fund is established is repugnant to any of the provisions of the Income-tax Act in this regard, the provision of the Scheme remains effective and operative.

Protection against attachment (Section 10) : The amount standing to the credit of any member in the Fund or credit of any exempted employee in provident fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee. Neither the Official Assignee appointed under the Presidency-Town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on any such amount.

The amount standing to the credit of the aforesaid categories of persons at the time of their death and payable to their nominees under the Scheme or the rules vest in nominees. And the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

Priority of payment of contribution over other debts (Section 11) : If the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency-Towns Insolvency Act, Section 61 of the Provincial Insolvency Act, Section 530 of the Companies Act, 1956, in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made.

Employer not to reduce wage etc. (Section 12) : No employer in relation to any establishment to which any Scheme applies shall by reason only of his liability for the payment of any contribution to the Funds or any charge under this Act or the Scheme, reduce directly or indirectly the wages of any employee or the total quantum of benefits in the nature of old-age pension, gratuity fund to which the employee is entitled under the term of his employment-express or implied.

Inspector (Section 13): The power to appoint Inspectors has been vested in appropriate Government for the purpose of the Act and Scheme. The area of jurisdiction is also for the Appropriate Government to decide upon. Appointment and the area assigned are to be notified in the Official Gazette.

Sub-section (2) deals with the powers of inspectors. These are general powers by means of

which the inspectors may carry out their particular duties. The sub-section, *inter-alia*, vested the inspectors with powers to :

- (a) collect information and require the employer or any contractor from whom any amount is recoverable under Section 8A to furnish such information as he may consider necessary;
- (b) at any reasonable time and with necessary assistance, enter and search any establishment or any premises connected therewith;
- (c) require any one found in charge of the above-mentioned establishment or premises to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;
- (d) examine, in respect of any matter relevant to any of the purposes aforesaid, the employer or any contractor from whom any amount is recoverable under section 8A, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or whom the inspector has reasonable cause to believe to be or to have been, an employee in an establishment
- (e) make copies of, or take extract from any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;
- (f) exercise each other powers as the scheme may provide.

By virtue of Sub-section (2A) any inspector may, for the purpose of enquiring into correctness of any information furnished in connection with the Family Pension Scheme or for the purpose of ascertaining whether any of the provisions of the Act or of the Family Pension Scheme have been complied with in respect of an establishment to which the Family Pension Scheme applies, exercise all or any of the powers conferred on him under the clauses mentioned in the preceding paragraph.

Sub-section (2B) provides that the provisions of the Criminal Procedure Code shall, so far as may be, apply to any search or seizure mentioned in the earlier paragraphs.

Penalties (Section 14): This Section deals with punishment for breaches of the provisions of the Act and the Scheme. Sub-section (1) provides for penalty for knowingly making or causing to be made, any false statement or false representation for avoiding any payment to be made by himself or of enabling any other person to avoid such payment. Such penalty is in the form of imprisonment for a term extending to one year or of fine extending to ₹ 5,000 or both.

Under Sub-section (1A), an employer who contravenes or makes default in complying with provisions of Section 6 or Section 17(3)(a) in so far as it relates to the payment of inspection charges, or Paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to 3 years, but—
(a) which shall not be less than 1 year and a fine of ₹ 10,000 in case of default in payment of

4.25 Business Laws, Ethics and Communication

the employees' contribution deducted from his wages; (b) which shall not be less than six months and a fine of ₹ 5,000, in any other case. It may, however, be noted that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for lesser term.

According to Sub-section (1B), an employer who contravenes or makes default in complying with the provisions of Section 6C or Section 17(3A)(a) in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to 1 year. But it shall not be less than six months and shall also be liable to fine which may extend to ₹ 5,000. The Court may however, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

Sub-section (2) provides that subject to the provisions of this Act, the Scheme, the family Pension Scheme or the Insurance Scheme may provide that any person who contravenes or makes default in complying with any of the provisions thereof shall be punishable with imprisonment for a term extending to 1 year, or with fine extending to ₹ 4,000, or with both.

Sub-section (2A) provides penalty where no other penalty is provided under this Act:

(i) for contravention or default in complying with the provisions of the Act, or (ii) of any condition subject to which exemption was granted under Section 17 of the Act. The penalty provided is imprisonment upto 6 months but not less than 1 month or/and fine upto ₹ 5,000.

Offences of company (Section 14A): This Section deals with prosecution of the companies which include firms and other associations of individuals; it also deals with the liability of officers, directors, partners, etc., of the company. If the offence under the Act is committed by a company, then the liability for the offence lies both on the company and on the person in charge of or responsible to the company at the time when the offence was committed. The company and the person as such would be jointly and severally responsible for the offence. Both can be proceeded against and punished for the offence. According to the proviso, the company and such person can be exonerated from liability if it and/or he proves: (a) that the offence was committed without its/his knowledge; or (b) that it/he exercised all due diligence to prevent the commission of such offence.

Sub-section (2) limits the scope of the Proviso mentioned above. If the prosecution proves that the offence: (a) was committed with the (i) consent; or (ii) connivance; or (b) is attributable to any negligence on the part of a director, manager secretary or other officer of the company, then such director, manager, secretary or other officer shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly.

Enhanced punishment in certain cases after previous conviction (Section 14AA): This Section deals with imposition of enhanced penalty, after the previous conviction. The conditions are: (a) that there should have been a conviction of offence punishable under this Act or the Scheme of the Family Pension Scheme, or the Insurance Scheme; (b) that the person convicted must be found guilty of an offence involving the commission of the same offence. The punishment for the conviction of the subsequent offence is imprisonment which should not be less than 2 years but can go up to five years. Further, there must be an

additional imposition of the fine extending to ₹ 25,000.

Certain offences to be cognisable (Section 14AB): This Section renders the offences relating to default in payment of contribution by the employer a cognisable offence. A cognisable offence is one where the police can arrest a person without warrant.

Cognisance and trial of offence (Section 14AC): This section deals with the complaints in regard to offences under the Act, the scheme or the Family Pension Scheme or Insurance Scheme and their cognisance.

The essential conditions of cognisance of offences are :

- (a) There must be a report in writing of the facts constituting such offence,
- (b) This report must be made with the previous sanction of the :
 - (i) Central Provident Fund Commissioner; or
 - (ii) Such officer as may be authorised by the Central Government;
- (c) The report must be made by an Inspector appointed under Section 13.

These conditions being co-existent, no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act, or the Scheme or the Family Pension Scheme or the Insurance Scheme.

Cognisance means jurisdiction or right to try and determine cases: Taking cognisance occurs as soon as Magistrate, as such, applies his mind to the suspected commission of an offence [*Ajit Kumar vs. State of West Bengal* AIR 1963 S.C. 765]. Section 190 of the Code of Criminal Procedure, 1973 empowers a Magistrate of the first class to take cognisance of an offence in three ways, viz. (i) on complaint; (ii) on police report; and (iii) on information from any person other than a police officer or on his own knowledge. It may be noted that Section 14-AC of the Act makes it necessary that in order to launch a prosecution, the facts constituting the offence have to be stated. If the facts stated do not disclose an offence, the prosecution cannot be proceeded with; also that complaint means the allegation made orally or in writing to a Magistrate (Court) with a view to his taking action under the Cr. P.C. that some person, whether known or unknown, has committed an offence but it does include the report of a police report [*Gopal Das Sakseria vs. State of Uttar Pradesh*, 1956 1 L.J. 11].

Power to Recover (Section 14-B): An employer may make default: (a) in payment of contribution to the fund, family fund or insurance fund; (b) in transfer of the accumulations required to be transferred under Section 15 (to be discussed later on) or (c) in the payment of any charges payable (i) under the provisions of the Act, or (ii) under any Scheme or Insurance Scheme, or (iii) under any of the conditions specified under Section 17 (to be dwelt upon later on). If he so does in any of the aforesaid circumstance, then the Central Provident Fund Commissioner or such officers as may be authorised by the Central Government by notification in the Official Gazette in this behalf may recover from employer certain amount of damages. Such amount may be anything but not exceeding the actual amount of arrears, as specified in the Scheme.

4.27 Business Laws, Ethics and Communication

The Central Board may; however, reduce or waive the damages levied under this Section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction (BIFR) established under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the scheme.

However, before levying or recovering such damages, the employer has to be afforded a reasonable opportunity of being heard.

Power of Court to make orders (Section 14-C): Where an employer is convicted of an offence of making default of any one of the kinds mentioned in Section 14-B above the Court may, in addition to awarding any punishment, by order in writing require him within a specified period in the order to pay the amount of contribution or transfer the accumulations, as the case may be, in respect of which the offence was committed. The period referred to in this order may, however, be extended by the Court if it thinks fit and on application in this behalf from time to time.

By virtue of Sub-section (2) of the Section, the impact of the aforesaid order of the Court would be that the clause in the order relating to continuance of the offence would remain suspended. If, however, on the expiry of the specified time, or as the case may be, the extended time, the order remains uncomplied with, then this default will be regarded as a further offence. For this further offence, the employer shall be liable to be punished with imprisonment under Section 14 and shall also be liable to a fine extending upto ₹ 100 for every day after such expiry on which the order has not been complied with.

Special provisions relating to existing provident funds (Section 15): This Section deals with the provisions relating to existing provident funds prior to the application of the Scheme or after the application of the scheme.

The implication of the opening phrase, viz., “subject to the provisions of Section 17” (dilated upon later on), is that if an exemption has been granted to the already existing rule regarding Provident Fund, then the provisions of Section 17 and the conditions laid down therein shall apply.

The section saves the existing provident Fund. That is to say, it shall, pending the application of the scheme, be operated and worked as though the Act had not been enforced. Therefore, every employee who is a subscriber to the existing provident fund of an establishment, pending the application of any scheme to the establishment, continues to be entitled to the benefits accruing to him under the provident fund; and the provident fund shall continue to be maintained in the same manner and subject to the same conditions as it would have been if this Act had not been passed.

On the application of the scheme to the fund already in existence, the amount standing to the credit of the employee who becomes a member shall be transferred to the fund established under the scheme. The condition contained in the scheme shall supersede all provisions of law or deed or instrument if there is anything to the contrary.

Act not to apply to certain establishments (Section 16): This Act does not apply to the

following classes of establishments, namely :

- (a) an establishment under the Co-operative Societies Act, 1912 or under any other law relating to co-operative societies in any State, employing less than 50 persons and working without the aid of power; or
- (b) any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under the Act governing pension in accordance with any scheme or rule framed under that Act governing such benefits; or

Sub-section (2) of the section further empowers the Central Government to exempt whether prospectively or retrospectively any class of establishments (not an individual establishment unless it constitutes a class within itself) from the operation of the Act, if the Government thinks necessary or expedient after taking into consideration the financial position of the establishment or other circumstances of the case. This exemption can be granted only through notification in the Official Gazette.

Authorising certain employers to maintain a P.F. Account (Section 16-A) : The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer by an order in writing, to maintain a provident fund account in relation to the establishment subject to such terms and conditions as may be specified in the Scheme.

No authorisation shall, however, be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorisation.

Where an establishment is authorised to maintain a provident fund account as aforesaid, the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Act.

Before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.

Power to exempt (Section 17): The exemption from the operation of all or any of the provisions of any scheme may be granted by the Appropriate Government. The exemption

4.29 Business Laws, Ethics and Communication

order is required to be notified in the Official Gazette. The exemption can be conditional. The condition shall have to be specified in the notification published in the Official Gazette. It can be from all or any of the provisions of the Scheme or Family Pension Scheme applicable to the establishment and may be made prospectively or retrospectively.

While granting exemption, the Appropriate Government shall see that, in its opinion, the rules in force regarding provident fund or family pension in the establishment :

- (i) with respect to the rates of contribution, or
- (ii) with respect to other provident fund benefits

are not less favourable to employees than the benefits provided in the Act or the Scheme in relation to the establishment;

No exemption under this Section shall be made without consultation with the Central Board.

Where an exemption has been granted to an establishment :

- (a) the provision of Sections 6, 7-A and 14-B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of the Act, he shall be punishable under Section 14 as if the said establishment had not been exempted;
- (b) the employer shall establish a Board of Trustees for the administration of the provident fund as per the terms specified in Section 17(1-A).

Any Scheme may make a provision for exemption of any person or class of persons employed in any establishment to which the Scheme applies from the operation of all or any of the provisions of the Scheme, if the benefits enjoyed (all taken together) in respect of provident fund, gratuity or old-age pension are on the whole not less favourable than the benefits provided under this Act or the Scheme. But no such exemptions can be granted in respect of a class of persons, unless the Appropriate Government is of the opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits [Sub-section (2)].

The Central Provident Fund Commissioner may grant exemption to any establishment from the operation of all or any of the provisions of the Insurance Scheme, whether prospectively or retrospectively. This exemption may be granted by notification in the Official Gazette and subject to such conditions as may be specified in the notification. The Central Provident Fund Commissioner may exempt: (a) if it is requested to do so by the employer and (b) if it is satisfied that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, whether or not linked to their deposits in the provident fund, and such benefits are more favourable to such employees than the benefits admissible under the Insurance Scheme [Sub-section (2-A)].

Without prejudice to the provisions referred to in the preceding paragraph, the Insurance

Scheme may provide for the exemption to any person or class of persons employed in any establishment and covered by that scheme from the operation of all or any of the provisions thereof. This exemption is admissible if the benefits in the nature of life insurance admissible to such person or class of persons are more favourable than the benefits provided under the Insurance Scheme [Sub-section (2-B)].

Where, in respect of any person or class of persons employed in an establishment an exemption is granted, the employer in relation to such establishment: (a) shall in relation to provident fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection any pay such inspection charges as the Central Government may direct; (b) shall not at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class of persons was entitled at the time of the exemption; and (c) shall, where any such person leaves his employment and obtain re-employment in another establishment to which this Act applies, transfer within such time as may be specified in this behalf by the Central Government, the amount of accumulations to the credit of the person in the provident fund of the establishment left by him to the credit of that person's account in the provident fund of the establishment in which he is re-employed or, as the case may be, in the fund established under the Scheme applicable to the establishment [Sub-section (3)].

Notification Under Section 17(3): In exercise of the powers conferred by clause (a) of Sub-section (3) of Section 17, the Central Government directs that every employer in relation to an establishment exempted under clause (a) or (b) of Sub-section (1) of Section 17 or in relation to any employee or class of employees exempted shall transfer the monthly provident fund contributions in respect of the establishment or as the case may be of the employee or class of employees within 15 days of the close of the month to the Board of Trustees duly constituted in respect of that establishment, and that the said Board of Trustees shall invest every month within a period of two weeks from the date of receipt of the said contributions from the employee, the provident fund accumulations in respect of that establishment or as the case may be, of the employee or class of employees, that is to say, the contributions, interest, and other receipts as reduced by any obligatory outgoings in accordance with the investment pattern as envisaged in the *Notification No. S.O. 937 dated 27th March 1997*.

Where an exemption is granted under Sub-section (2-A) or (2-B) mentioned above, the employer in relation to such establishment: (a) shall in relation to the benefits in the nature of life insurance to which any such person or class of persons is entitled or any insurance fund, maintain such accounts, submit such returns, make such investments, provide for such facilities for inspection and pay such inspection charges so the Central Government may direct (b) shall not, at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of life insurance to which any such person or class of persons was entitled immediately before the date of the exemption; and (c) shall, where any such person leaves his employment and obtains re-employment in another establishment to which this Act applies, transfer within such time as may be specified in this behalf

by the Central Government, the amount of accumulations to the credit of that person in the insurance fund of the establishment left by him to the credit of that person's account in the insurance fund of the establishment in which he is re-employed or, as the case may be, in the Deposit-linked Insurance Fund [Sub-section (3-A)].

The exemption granted under this Section can be cancelled in case of failure on the part of an employer to comply with the terms and conditions imposed on which exemptions were granted under various sub-sections mentioned above. In that case, the accumulations to the credit of an employee would be transferred to the relative Funds mentioned above [Sub-sections (4 and 5)].

The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or proposes to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act" [Section 17(1)]

Transfer of accounts (Section 17-A): This Section provides for the transfer of accounts of an employee in case if his leaving the employment and taking up employment in another establishment and to deal with the case of an establishment to which this Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee.

Where an employee of an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund or, as the case may be, in the provident fund in the establishment left by him shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer. This transfer has to be made within such time as may be specified by the Central Government in this behalf [Sub-section (1)].

Conversely, when an employee of an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires and the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is re-employed [Sub-section (2)].

Act to have effect notwithstanding anything contained in the Life Insurance Corporation Act, 1956 (Section 17-AA): In case of any inconsistency between this Act and LIC Act, 1956, this Section provides that the Employees Provident Fund, etc. Act will prevail over the provisions of the Life Insurance Corporation Act, 1956.

Liability in case of transfer of establishment (Section 17-B):

Section 17-B deals with the liability of transferor and transferee in case of transfer of establishment

in regard to the money due under: (a) the Act; or (b) the Scheme; (c) Pension Scheme. In the case of transfer of the establishment brought in by sale, gift, lease, or any other manner whatsoever, the liability of the transferor and the transferee is joint and several, but is limited with respect to the period up to the date of the transfer. Also the liability of the transferee is further limited to the assets obtained by him from the transfer of the establishment.

Protection of action taken in good faith (Section 18): No suit, prosecution or other legal proceeding shall lie against the Central Government, a State Government, the presiding Officer of a Tribunal, any authority referred to in Section 7-A, an Inspector or any other person for anything which is in good faith done or intended to be done in pursuance of this Act, the Scheme, the Pension Scheme or the Insurance Scheme.

Presiding Officer and other officers to be public servants (Section 18-A): The Presiding Officer of a Tribunal, its officers and other employees, the authorities referred to in Section 7-A and every inspector shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

Delegation of powers (Section 19): The Appropriate Government may direct that any power or authority or jurisdiction exercisable by it under this Act, the Scheme, the Pension Scheme or the Insurance Scheme shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be specified in the notification; (b) where the appropriate Government is a State Government by such Officer or authority subordinate to the State Government as may be specified in the notification.

Power to remove difficulties (Section 22): If any doubt or difficulty arises in giving effect to the provisions of this Act, and particularly, in respect of : (i) cases where an establishment which is a factory, is engaged in any industry specified in Schedule I; (ii) whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a notification under Section 1(3) (b); or (iii) the number of persons employed in an establishment; or (iv) the number of years which have elapsed from the date on which an establishment has been set up; (v) whether the total quantum of benefit to which an employee is entitled has been reduced by the employer then the Central Government may, by order, make such provisions or give such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty : and the order of the Central Government in such cases shall be final.