

Chapter 3

Compliance of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and Employees' Provident Fund Scheme, 1952

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was enacted to provide for the institutions of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. The Employees' Provident Funds Scheme, 1952 was framed by Central Government in exercise of the powers conferred by Section 5 of the Employees' Provident Funds Act, 1952 to benefit the employees of following establishments along with many other establishments:

- (a) as respects establishment engaged in laundry and laundry services referred to in the notification of the Government of India in the Ministry of Labour and Employment,
- (b) as respects the establishments engaged in rendering cleaning and sweeping services, specified in the notification of Government of India in the Ministry of Labour and Employment,
- (c) with respect to the establishments engaged in Railways for construction, maintenance, operation and commercial activities of Railways, excluding Indian Railways exclusively managed by Government of India whose employees are in enjoyment of the Provident Fund, Pension and other retirement benefits under the rules made by the Central Government; specified in notification of the Government of India in the Ministry of Labour and Employment, etc.

The responsibility to ensure compliance to the provisions of EPF & MPA, 1952 and EPFS, 1952 rests with EPF Organisation. The employee contributes 12 *per cent* of the wages towards Employee Provident Fund contribution. The employer also contributes 12 *per cent*, which includes 3.67 *per cent* to EPF and 8.33 *per cent* towards Employees' Pension Scheme.

Audit reviewed selected contracts to check the extent of compliance of the provisions of the EPF & MPA, 1952 and EPFS, 1952. Audit findings are discussed in the following paragraphs.

3.1 Registration of the Contractor with the EPFO

3.1.1 Responsibility of the Principal Employer to ensure registration of the contractor before award of contract

As per the directives of Employee's Provident Fund Organization⁴⁸, before awarding any contract, the Principal Employer shall ensure that the contractor is registered with EPFO. After award of the contract the contractor details should also be entered by the Principal Employer in the EPFO portal.

Out of 463 contracts reviewed in audit,

- In 20 contracts, Railway Administration verified that the registration of contractor with the EPFO existed before award of the contracts.
- In 12 contracts, Railway Administration did not ensure registration of contractor with the EPFO either before or after award of the contracts, and
- In 431 contracts, records were not made available.

Thus, Railway Administration failed to perform its role as Principal Employer and did not ensure registration of contractors before or after award of contracts. As a result, assurance regarding the rights of contract labour engaged through the contractors was compromised.

Annexure 3.1

3.1.2 Responsibility of the employer (contractor) regarding registration with EPFO

As per the requirement to comply with the provisions⁴⁹, every employer covered under this Act should get registered with EPFO. Out of 463 contracts reviewed in audit,

- Only in respect of 46 contracts, PF Registration was found to be taken by the contractors.
- In 96 contracts, PF Registration had not been taken by the contractors.
- In the remaining 321 contracts, information of PF Registration of the contractor could not be found on record.

Annexure 3.1

Thus, non-compliance to the provisions of the Act by the Principal Employer, diluted the assurance regarding compliance of the provisions by the contractors.

3.1.3 Allotment of Provident Fund Account Number to Contract Labour

Rules⁵⁰ require that the employer (contractor) shall send to the organisation of EPF Commissioner within 15 days of the close of each month, a return in Form 5 of the employees qualifying to become a member of the fund for the first time

⁴⁸ CAIU/011(332015/Headquarter/Vol.II/28445 dated 2 February 2017

⁴⁹ Section 2 (e) EPF & MPA, 1952 on whom this Act applies through Section 1(3)(a) and 1(3)(b) of EPF & MPA, 1952 and Para 36 of EPFS, 1952

⁵⁰ Para 36 (2)(a) of EPFS, 1952

during the preceding month together with the declaration in Form 2 furnished by such qualifying employees'. The Commissioner shall promptly allot a PF Account Number to each employee qualifying to become a member and shall communicate the Account Number to the member through the employer⁵¹.

Out of 463 contracts reviewed in audit,

- In respect of only 61⁵² contracts, PF Account Numbers of contract labour were available,
- In respect of 144⁵³ contracts, no action was taken by the employer (contractor) towards application and allotment of PF Account number to the contract labour, and
- In respect of 258 contracts, relevant records were not made available to Audit.

Thus, non-allotment of PF numbers to the contract labour excluded them from availing the facility of EPF. This was attributable also to the absence of action on part of Railway administration to fulfil its obligation under the laid down provisions.

3.1.4 Responsibility of the Principal Employer towards payment of EPF deduction from the wages of contract labour and contribution by the contractors

Principal Employer is responsible to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges⁵⁴. In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (member's contribution) and shall pay to the Principal Employer the amount of member's contribution so deducted together with an equal amount of contribution (in employer's contribution) and also administrative charges⁵⁵.

Out of 463 contracts reviewed in audit,

- In respect of 32 contracts only, EPF deductions from employees was made in compliance to the above mentioned provisions without any shortfall.
- In respect of 22 contracts, the EPF deductions from employees were found short by ₹ 0.14 crore, in case of 1290 contract labour, as assessed by Audit.

⁵¹ Para 37 of EPFS, 1952

⁵² NCR (8), CR (25), NR (10), NWR (14), SWR (4)

⁵³ NCR (63), CR (30), NR (17), NWR (10), SWR (24)

⁵⁴ Para 30 (3) of EPFS, 1952

⁵⁵ Para 30 (2) of EPFS, 1952

- In respect of 103 contracts, the EPF deductions from employees had not been done at all. Short-deduction/non-deduction of ₹ 1.92 crore in case of 2388 contract labour was assessed by Audit.
- In respect of 306 contracts, the records relating thereto were not made available to audit. Thus, in respect of these contracts, audit could not assess the amount of EPF deduction/short deduction.

Annexure 3.2

- In respect of 29 contracts only, employers' contribution towards EPF was made in compliance to the above mentioned provision without any shortfall.
- In respect of 24 contracts, the employers' contribution towards EPF were found short by ₹ 0.36 crore in case of 1525 contract labour as assessed by Audit.
- In respect of 104 contracts, EPF contribution from employers had not been done and Audit assessed a short contribution of ₹ 2.18 crore in case of 2206 contract labour.
- In respect of 306 contracts, the records relating thereto were not made available to audit and audit could not assess the amount of EPF contribution not deducted/short deducted.

Annexure 3.3

Thus, an amount of ₹ 4.60 crore was either short deducted/not deducted or contribution was not made fully/partly. This amount was neither deposited by the Principal Employer with EPFO nor recovered from the contractors. Thus, inaction by Railway administration adversely impacted the rights of contract labour.

3.2 Provisions of the Pradhanmantri Rojgar Protsahan Yojana

In order to incentivise creation of new jobs in the formal sector, Government of India have introduced the Pradhanmantri Rojgar Protsahan Yojana⁵⁶, wherein Government of India will pay 8.33 *per cent* contribution of employers to the Employee Pension Scheme (EPS) in respect of new employees having a Universal Account Number (UAN). These guidelines have been made effective from 9 August 2016. The scheme has been introduced with an aim to incentivize the employers to recruit unemployed persons and also to bring into books the informal employees.

Railways need to encourage the contractors to follow provisions of the EPF & MPA, 1952 and EPFS, 1952 and effectively avail of the incentives under the newly

⁵⁶ OM No. DGE-U-13015/1/2016-MP (G) dated 23.02.2017 of the Government of India, Ministry of Labour and Employment, Directorate General of Employment

introduced scheme to promote recruitment of unemployed persons and bring into books the informal employees.

3.3 Check and monitoring by EPFO

As per laid down provisions⁵⁷, the officials of EPF Commissioner may conduct inspections of establishments under their jurisdiction for checking of workers record of deduction/contribution and deposit of EPF amount to EPFO for compliance of the provisions of EPF and MPA, 1952. Review of records/documents produced to audit revealed that no action was initiated by the officials of EPF Commissioner relating to protection of rights of deployed contract labour. During the period of audit, no evidence could be found in the records of railway administration to show that inspections were carried out by the officials of the EPFO to check the compliance to laid down rules and provisions towards fulfilment of statutory obligations under the above mentioned Acts and Rules.

In this regard, Audit observed that with a view to simplify business regulation, a transparent Inspection Policy⁵⁸ with system driven triggers equipped with relevant norms and criteria has been formulated in June 2014, for ensuring accountability, transparency and minimising frequent inspections. The scheme has laid down guidelines for mandatory inspections. In addition, the EPFO would set up a Central Analysis and Intelligence Unit (CAIU) for collecting and analysing field level data for a transparent and accountable labour inspection system. The cases forwarded through CAIU will be based on data and evidence and EPFO would formulate an objective methodology for selection criteria of the cases by the CAIU keeping in view its priorities and provisions of ILO C-81⁵⁹. In respect of certain specific cases, the inspection would be optional and the inspections would be generated through computer using pre-decided number tables taking into account drop in remittances/membership as compared to last quarter, as per prescribed parameters. The methodology prescribed under the Inspection Policy include employers to feed master data and periodical returns on Shram Suvidha Portal. Thus, by assuring themselves of the applicability of the Act and Rules on the contractors and ensuring his registration with the EPFO would be the basic necessary requirement which, the Principal Employer (Railways) has to ensure, in order to follow the provisions of the Act and Rules.

⁵⁷ Section 13 of EPF and MPA, 1952 read with Para 46 of EPFS, 1952

⁵⁸ No. MIS-2(4) CAIU/Web Portal/2014-15, Employees' Provident Fund Organisation, Ministry of Labour and Employment, Government of India, New Delhi dated 26 June 2014

⁵⁹ Recommendation concerning Labour Inspection of the International Labour Organisation