

Central Administrative Tribunal  
Principal Bench, New Delhi

OA No.2619/2019  
&  
OA No.1398/2019

New Delhi, this the 28th day of February, 2020

**Hon'ble Mr. R.N. Singh, Member (Judicial)**

**OA-2619/2019**

Madan Lal Paneri, Aged 69 Years 'A'  
S/o Sh. Chunni Lal Paneri  
Retired as Principal from KVS  
R/o H. No.3, Road No.2, Ansari Vatika  
Subhash Nagar, Udaipur (Raj) –Applicant  
(By Advocate: Mr. Yogesh Sharma )

**Versus**

1. Union of India through the Secretary  
Ministry of Human Resources Developments  
Govt. of India, New Delhi.
2. The Commissioner  
Kendariya Vidyalaya Sangathan,  
18, Institutional Area, Saheed Jeet Singh Marg,  
New Delhi.
3. The Joint Commisioner, (Trg. & Fin.)  
Kendariya Vidyalaya Sangathan,  
18, Institutional Area, Saheed Jeet Singh Marg,  
New Delhi. – Respondents  
(By Advocate: Mr. G.S. Virk, Mr.U.N.Singh)

**OA No.1398/2019**

Ramesh Chandra Agarwal, Aged 71 Years 'A'  
S/o Late Sh. Roshan Lal, Agarwal,  
Retired as Principal from KVS  
R/o A-18, Saivam Park Society  
Behind Akasvani, Makarpura Road,  
Vadodara, Gujarat-390009. – Applicant.

(By Advocate: Mr. Yogesh Sharma)

**Versus**

1. Kendariya Vidyalaya Sangathan  
Through the Commissioner  
Kendariya Vidyalaya Sangathan  
18, Institutional Area, Saheed Jeet Singh Marg  
New Delhi-110016.
2. The-Finance Officer  
Kendariya Vidyalaya Sangathan,  
18, Institutional Area, Saheed Jeet Singh  
New Delhi-110016. – Respondents

(By Advocate: Mr.Vijay Sharma for Mr. Om Prakash Shukla in OA No.1398/2019 )

**ORDER (ORAL)**

Heard the learned counsels for the parties.

2. The aforesaid OAs have been filed by the applicants therein under Section 19 of the Central Administrative Tribunal's Act, 1985 to challenge the respondents' order 07.052019 (Annexure A-1) by which the respondents have refused to grant service benefits under the GPF cum pension scheme.

3. As the issue raised in the aforesaid OAs are admittedly related to the common question of law and facts, the said OAs with the consent of parties have been heard together and are being disposed of by the present common order. For adjudication the OAs, the brief facts noticed therein are as under:-

(i) In OA No.2619/2019. The applicant was initially appointed as Post Graduate Teacher (PGT) on 07.07.1997. Subsequently the applicant was appointed as Principal on 19.05.2000 on Direct Recruitment basis and he retired as such w.e.f. 31.03.2009.

(ii) In OA No.1398/2019. The applicant was initially appointed as Post Graduate Teacher (PGT) on 20.02.1983 and subsequently the applicant was appointed as Principal on 15.07.2002 on direct recruitment basis and he retired from service on attaining the age of superannuation on 31.03.2008.

4. It is contended on behalf of the applicants that in the year 1985 as per the Govt.of India's decision, options were invited from all the Government Servants to that effect as to whether they want to come over to the Pension Scheme or want to still continue under CPF Scheme. It has further been contended that while working as PGT, the applicants were under CPF Scheme and on being directly recruited as Principal, no option was given by them to continue under the same CPF Scheme. It is further contended that w.e.f. 1.1.1986, the date from which recommendations of the 4<sup>th</sup> CPC was implemented, Govt. Servants who were appointed after 1.1.1986 were required to be

regulated under GPF cum Pension Scheme as there was no CPF scheme for them and the applicants being direct recruit Principals well after 01.01.1986 were deemed to be regulated and governed by the GPC Scheme.

5. Learned counsel for the applicants, Mr.Yogesh Sharma have submitted that the applicants were appointed as Principal on Direct Recruitment basis, and they did not give any option to continue under the CPF Scheme. He has further submitted that after 1.1.1986 fresh recruits under the respondents were deemed to be regulated under GPF Scheme as the CPF Scheme no more existed for the new recruits under the respondents. However, the applicants were continued to be regulated under the CPF Scheme and they retired under such CPF Scheme only. The Applicant Mr. Madan Lal Paneri has made representations before the respondents and he was informed by the respondents vide order dated 31.10.2018 (Annexure A-2) that on his request, necessary action is going on. However, when no action was taken by the respondents to redress the grievances of the applicant, he approached this Tribunal by filing OA No. 157/2019 and the said OA was disposed of vide order/judgment dated 15.01.2019 (Annexure A-7) and in purported compliance of the direction of this Tribunal the respondents have passed order dated

07.05.2019 (Annexure A-1), whereby the respondents have informed that request of the applicant for conversion of CPF to GPF cum-Pension Scheme cannot be exceeded to.

Similarly, in OA No.1398/2019, the applicant made representations (Annexure A-6 colly) claiming that he should be regulated under the GPF-cum Pension Scheme and not old CPF Scheme. In response thereto, the respondents have informed the applicant vide their letter No.110125/ 102/2018/K.V.S./CPF to GPF /6017 dated 22/05/2018 (Annexure A-3) that claim of the applicant is under consideration. However, till date no final decision has been taken by the respondents. Ordinarily I would have remitted the matter to the respondents for taking expeditious decision. However, keeping in view the fate of the applicant in OA No.21619/2019 and the reply filed and the submissions made on behalf of the respondents to oppose the claim of the applicant, this OA has also been heard on merit with the consent of the learned counsels for the parties.

6. Learned counsel for the applicants argues that once the applicants were appointed to the post of Principal as direct recruit and after the aforesaid date from which the CPF Scheme has not been in existence for direct recruits under the respondents, there was no occasion for the respondents to regulate the service benefits of the applicants under the CPF

Scheme. He further argues that when the applicants have not given any option to the effect that they should be continued under the same old pension scheme, they were not required to be regulated under the old CPF scheme, more so in view of judgment of a Division Bench of the Tribunal passed on 19.09.2016 in the case of **Hoshier Singh vs. Union of India & Ors.** (Annexure A-3) which has been followed by this Tribunal while passing the judgment dated 08.11.2016 (Annexure A-4) in OA No. 2073/2014 titled **B.C. Tyagi vs. Union of India and ors.**

7. Learned counsel for the applicants further places reliance upon the common order/ Judgment dated 15.05.2017 passed by the coordinate Bench of this Tribunal in OA No.4592/2015 titled **Vijay Kumar vs. Union of India & Ors** with a batch of OAs. He argues that the judgment of this Tribunal in the said cases have attained finality and the respondents have implemented. He has further referred to para 4.16 of the OA No. 2619/2019 wherein he has mentioned the names of 14 persons, OAs filed by whom have been allowed by this Tribunal.

8. In response to the notices from this Tribunal in the OAs, the respondents except the Respondent No. 1 i.e. U.O.I. have filed

their counter reply affidavits and therein, the respondents have opposed and disputed the claim of the applicants. The learned counsel for the respondent no.1 (Union of India) submits that they would adopt the reply & submissions of the other respondents.

9. With the assistance of the reply filed by the respondents, Mr. U.N.Singh and Mr. Vijay Sharma who appeared for the respondents have argued that the aforesaid OAs are barred by limitation in as much as the applicants have retired from service of the respondents around 09 years back and only after a few years of their retirement they have approached the Tribunal. They further argue that the applicants were working as Principal and they were holding the position of Drawing and Disbursement Officer (DDO) and they were very much aware of the facts that they are being regulated under the CPF Scheme and they have never issued any objection as to why they were being governed under the CPF Scheme and they should be regulated under the GPF Scheme. The learned counsels for the respondents have also submitted that new CPF Scheme was allowed to the applicants even after 1.1.1988 and the applicants have never raised any objection. They have never claimed that they should be considered under the GPF- Scheme. The learned counsels for the respondents have placed reliance upon the judgement passed by

the Tribunal on 20.01.2011 in OA No. 571/2010 in the case of **Ms. Madhu Gautam vs. Commissioner of KVS and Ors** and have argued that applicant in the said case was working as Principal under the respondents and had approached this Tribunal wherein it was viewed that since the applicant never protested against the continuance under CPF Scheme and the nomination was made by her in favour of her husband for a CPF account without any protest whatsoever, was ample secondary evidence to establish that the applicant knowingly continued to be member of CPF Scheme and therefore she cannot be allowed to contend that she was a deemed pension optee. They have further placed reliance upon the judgment dated 29.04.2013 passed by a Single Bench of the Tribunal in the case of **Smt. Bharti Bahuguna vs. Union of India & Ors**, wherein this Tribunal has dismissed the OA holding that the applicant therein continued to subscribe to CPF Scheme for a long period of more than 22 years and she received the CPF amount and in view taken by the Hon'ble Supreme Court in **KVS and Ors vs. Jaspal Kuar and another** (2007) 6 SSC 13), the Original Application is found devoid of merit. They have further placed reliance upon the judgment dated 12.09.2019 by the Single Bench of the Tribunal in OA No.4222/2018 (**Ms. Anjali Das & Ors vs. Union of India & Ors**) wherein this Tribunal held that in all those cases



where the relief had been granted, no option had been given, therefore, the concerned employee (s) were held to be to be deemed to have covered under the GPF-cum-Pension Scheme and the case of the applicants in that OA was not found of that kind as the applicants had specifically exercised their option to remain in CPF Scheme.

10. I have considered the submissions made on behalf of both the parties, facts and circumstances of the case and have also perused the pleadings available on record carefully. It is not in dispute that applicants joined the service of the respondents as Principal as direct recruit candidates. It is also not in dispute that after 1.1.1986 CPF Scheme has been closed by the respondents for the new enterant under the respondents. It is also not in dispute that in the case of **Hoshiar Singh vs. Union of India & Ors** (supra) similarly placed directly recruited Principal has approached this Tribunal for a declaration to the effect that action of the respondents applying the CPF Scheme on the applicant on his fresh appointment as Principal in the year 2002 is void-ab-intio as in 2002 as CPF Scheme was not in operation for fresh appointees and to direct the respondents to treat the applicant as governed under the GPF –Pension Scheme from the date of his fresh appointment to the post of Principal with all

consequently benefits. In the case of **Hoshiar Singh vs. Union of India & Ors**, the Division Bench of the Tribunal in the order dated 19.09.2016 considered various judgments including the judgment of Ernakulam Bench of this Tribunal in OA No. 457/2011 **Joshnson P. John vs Assistant Commissioner, KVS** as well as the law laid down in various other cases including the ratio laid down by the Hon'ble Apex Court in the case of **Jaspal Kaur**(Supra) on which the learned counsels for the respondents placed tremendous amount of emphasis. Paras 8 to 11 of the judgment dated 19.09.2016 of a Division Bench of this Tribunal in Hoshiar Singh (supra) reads as under:-

"8. The ratio laid down by the Hon'ble Apex Court in the case of Jaspal Kaur (supra) on which the learned counsel for the respondents laid tremendous amount of emphasis, simply does not apply to the case of the applicant for two reasons. Firstly, the Hon'ble Apex Court in that case had perused the original service book of Jaspal Kaur and had found that even on 10.06.2005 in the Last Pay Certificate, it was stated that she had opted for the CPF Scheme. Based on the said observation, the Hon'ble Apex Court held that merely because the original documents relating to exercise to option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. Secondly, as held by us, the applicant was appointed as Principal in the year 2002 on direct recruitment basis and at that time the GPF-cum-Pension Scheme was automatically applicable to all direct recruits to various posts in KVS. The other judgments quoted by the learned counsel for the respondents do not have any bearing to this case.

9. On the issue of limitation, raised by the learned counsel for the respondents, suffice to say that the applicant has represented to the respondents regarding this issue way back on 18.01.2012 and 18.04.2012 much before his superannuation on 31.08.2014 and more so the issue involved is recurring in nature. We, therefore, hold that the limitation will not come in 14 (OA No.3112/2013) the way of the applicant. This Tribunal has also granted identical prayer to the applicants in OA No.1437/2009 vide order dated 12.04.2010 in the case of Amit Mukherjee & Ors. (supra) and the said order had already been implemented by the respondents.

10. In view of the discussions in the foregoing paras and for the reasons given therein, the OA is allowed. The respondents are directed to extend the benefits of the Pension Scheme to the applicant considering his appointment as Principal on direct recruitment basis w.e.f. 14.08.2002. This shall be done within a period of three months from the date of receipt of a certified copy of this order. It is also made clear that the applicant shall not be entitled to any interest on the arrears of the pension payable to him.

11. No order as to costs”

11. The said judgment of this Tribunal in Hoshiar Singh (supra) was followed by a Division Bench of this Tribunal in its judgment dated 08.11.2016 (Annexure A-4) in OA No. 2073/2014 in the case of **B. C. Tyagi vs. Union of India & Ors** and therein also the Tribunal has considered objection taken by the respondents as being taken in the present OA and ruled as under:-

“19. In this manner, once the same benefit of GPF and Pension Scheme was granted to the similarly situated persons, then the same very benefit cannot possibly be denied to the applicant as well on the principle of parity in view of law laid down by Hon’ble Apex Court in cases Man Singh Vs. State of Haryana and others AIR 2008 SC 2481 and Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120 wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

20. Therefore, the applicant is also held entitled to the benefit of same very GPF Scheme on the basis of parity as well, in the obtaining circumstances of the case in the manner discussed hereinabove. Thus, the contrary 11 OA No.100/2073/2014 argument of the respondents *stricto sensu* deserve to be ignored. The indicated ratio of law laid down by Hon’ble Apex Court, Hon’ble High Court of Delhi and of this Tribunal is *mutatis mutandis* applicable to the present controversy and is a complete answer to the problem in hand. 21. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

22. In the light of the aforesaid reasons, OA is hereby accepted. The impugned orders dated 11.03.2014 (Annexure A-1) and dated 20.04.2012 (Annexure A-1 Colly) and all other communications adversely affecting the right of the applicant, in this regard, are hereby set aside. Applicant is held entitled to be governed by GPF-cum-Pension Scheme with effect from his joining the independent substantive post of PGT (Geography)

with all consequential benefits. However, the parties are left to bear their own costs.”

12. It is not in dispute that OA No. 4592/2015 titled **Vijay Kumar Malik vs. Union of India & Ors** with a batch of seven other OAs came before this Tribunal for final adjudication. These OAs were taken up for hearing on 15.05.2017, the learned counsel for the applicants and respondents were ad idem that the issues raised in these OAs are squarely covered by the Decision of this Tribunal in **Hoshiar Singh** (supra) and as such they could be disposed of accordingly. It was further submitted that the KVS has already implemented the order of this Tribunal in Hoshiar Singh (supra).

In view of the aforesaid facts and circumstances of the case, it is evident that the claim of the identically placed persons have been adjudicated not once by the Division Bench of this Tribunal in the case of Hoshiar Singh(supra) but same has been repeatedly followed in a catena of cases and this fact has been admittedly brought to the notice of this Tribunal, at the end the respondents as well as can be noticed from the judgment dated 15.05.2017 in the case of Vijay Kumar Malik (supra). However, it is surprising how the respondents in place of extending the benefits of the Judgment of Hoshiar Singh (supra) at their own to the similarly placed present applicants also, have compelled them to approach this Tribunal by way of the present OAs.

13. With regard to limitation, it would be clear from the aforesaid that issue is no more res inetegra in view of the judgement of this Tribunal in the case of Hoshiar Singh(supra).

14. In view of the above, I am of the considered view that issue involved in the present OAs has been decided by the court of competent jurisdiction and same has attained finality in as much as the judgment(s) have been implemented but the respondents are not extending the benefit thereof to similarly situated persons who are being compelled to approach the Tribunal or Court for the similar relief. Such approach of the respondents has been deprecated by the Hon'ble High Court and the Apex Court in various cases.

15. In view of the facts and circumstances and the law as discussed above, I am of the considered view that aforesaid OAs deserved to be allowed.

16. Accordingly, the OAs are allowed with the following order(s)/ direction (s):-

a) The impugned orders are set aside.

b) The respondents are directed to extend the benefits of GPF-Pension-Scheme to the applicants in the aforesaid

OAs keeping in view their appointment as Principal under the respondents on Direct Recruitment basis.

- c) Adjustment of account/ amount shall also take place viz-a-viz the amounts, if already paid to the applicants.
- d) The aforesaid exercise shall be completed by the respondents as expeditiously as possible and in any case in not more than 3 months from the date of receipt of a certified copy of this order.

17. However, in the facts and circumstances, there shall be no order as to the costs.

**(R.N.Singh)**  
**Member (J)**

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