

CENTRAL ADMINISTRATIVE TRIBUNAL - PRINCIPAL BENCH

Original Application No. 2924 of 2001

New Delhi, this the 15th day of August, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDG.)

Smt. Indra Sharma
Principal (Retired)
A-64, Sector 30,
NOIDA (UP).

(14)
-APPLICANT

(by Advocate: Shri M.L. Chawla)

Versus

1. Union of India
Through Secretary,
Human Resource & Development,
Ministry of Human Resources & Development,
Government of India,
New Delhi.

2. Commissioner
Through Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.

-RESPONDENTS

(By Advocate: Shri S. Rajappa)

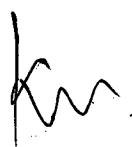
O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judg.)

The applicant has filed this OA seeking the following reliefs :-

(i) To direct the respondents to immediately release pension or provisional pension and pensionary benefits to the applicant, which have not been paid since October, 1996 including leave encashment and other benefits.

(ii) To quash and set aside the charge-sheet dated 4.7.94 together with the findings of the Inquiry Officer and which enquiry they have failed to initiate



and complete within three months stipulation as per directions of the Hon'ble CAT as contained in their order dated 20.12.2000 within the period of three months as directed. As a consequence of this relief the respondents be directed to release the withheld gratuity to the extent of 25% as a cut imposed as measure of penalty and which had been quashed and set aside (deleted vide order 23.10.2001).

(iii) To further direct the respondents to pay the arrears of Pension, leave encashment as well as any other benefits, which fell due by virtue of implementation of Vth Pay Commission at with interest at the rate of 24%.

(iv) To further direct the respondent to re-fix the pay of the applicant in revised pay scale in terms of Vth Central Pay Commission report w.e.f. 1.1.1996 and to pay the arrears of difference in pay drawn and pay admissible by virtue of revision in pay scale.

(v) To pay any other arrears accruing to the applicant by virtue of implementation of the Pay Commission recommendation especially the revised gratuity in terms of revised pay scale.

2. The relevant facts in brief are that the applicant was working as a Principal, Central School, Dadri in the year 1993 wherefrom she retired on 30.9.96 on superannuation. The applicant further claims that she

had been granted the benefits of the CPC which had been made applicable w.e.f. 1.1.1996 inasmuch as 75% gratuity which had been paid to the applicant had been paid at the old rates of pay that too with an inordinate delay so the pay of the applicant has to be fixed in the revised pay scale w.e.f. 1.1.1996 in terms of the recommendations of the Vth CPC for which she has been made to suffer immensely so much so that the applicant is without any means of livelihood in the absence of pension as there is no earning member in the family.

3. It is further stated that nonpayment of the pension to the applicant without any order of the competent authority is full of malice and mala fide. Thus the applicant has made prayers, as contained above.

4. Respondents are contesting the OA. The respondents pleaded that as regards the shortfall in the payment of gratuity is concerned, the respondents pointed out that since the disciplinary proceedings was pending against the applicant and this court directed the disciplinary authority to consider the case afresh after giving sufficient opportunity of hearing which the applicant did not avail of and only thereafter an order of penalty of 20% cut from the gratuity was passed. An amount of Rs.3888/- has also been released to her.

5. As regards the pension is concerned, applicant being a CPF optee, she is entitled for the management share of CPF, gratuity and GIS saving amount and as such

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she is not entitled to the pension. It is specifically stated that the applicant did not opt for GPF so she is not entitled for pension.

6. It is further stated that the applicant knows fully well that she had opted for CPF scheme so she cannot claim pension by filing the present OA.

7. Rejoinder to this was also filed. In the rejoinder the applicant specifically pleaded that since the relief clause, as contained in para 8 (ii) has been deleted at the request of the applicant, hence the relief confined only to matters pertaining to grant of pension and re-fixation of pay in terms of the 4th CPC.

8. The applicant further submitted that with the introduction of GPF-cum-Pension Scheme approved and introduced as a result of the 51st meeting held on 31.5.88 by the Board of Governors of KVS, the applicant had earlier opted for CPF scheme, no doubt shifted from her earlier option of CPF scheme to newly introduced scheme called as GPF-cum-pension scheme. Provisions which are relevant are contained in para 4(ii) of the Scheme. Thus with the recommendation of the 4th CPC, the Central Government CPF beneficiaries who are in service as on 1.1.1986 are deemed to have come over to the Pension Scheme unless opted out to continue under the CPF scheme as per the Ministry of Personnel OM dated 1.5.87. So all CPF beneficiaries in service as on 1.1.1996 were given the option to continue under CPF Scheme failing which they were deemed to have switched over to pension scheme. The applicant claims that as she was in service



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on 1.1.1986 and retired thereafter and had also given option to have her retirement benefits calculated under the Pension Scheme by 30.9.87, so she is entitled to the Pension.

9. After this rejoinder, the respondents filed an additional affidavit on 12.4.2002 wherein the respondents reiterated that applicant is not entitled to get pension as she had suppressed the material fact that she contributed to the CPF Scheme and she vide her application dated 31.1.1989 had opted to continue under the CPF scheme. This application was signed by applicant as well as counter-signed by the Chairman, Kendriya Vidyalaya, Gurgaon. Further applicant being the Principal of the KVS, Gurgaon had sent a letter containing names of various employees who had opted for CPF scheme and in the said list the name of the applicant, being the Principal, appears at the top of the list. The respondents have also annexed Annexures A and B along with the additional affidavit and thus submitted that the applicant having opted for CPF scheme cannot ask for pension now.

10. Rejoinder to this additional affidavit was also filed and in the rejoinder the applicant has taken a plea that it is someone else who had filled the form and someone other than the person who had filled the form had put the date on the left side of the form, so it is further pleaded that the papers for pension was submitted on 20.5.95 which had been countersigned by the then Deputy Commissioner and the same had been accepted



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clearly indicating that the applicant had opted for EPF Scheme. Thus applicant requested that she is entitled for pension.

11. I have heard the learned counsel for the parties and gone through the records of the case.

12. The learned counsel for the applicant has referred to two judgments reported in ATR 1988 (2) CAT 49 entitled as Smt. Laxmi Vishnu Patwardhan Vs. Secretary, Railway Board and Another and ATJ 1989 (2) 334 CAT Principal Bench entitled as Shri Jagat Prasad Srivastava Vs. U.O.I. & Others. Both these cases relate to Railway employees where pension scheme was introduced w.e.f. 16.11.1957 and the form for exercise of option was not served upon the applicant personally so the claim for pension was held to be entitled. In both the cases the form of option was not served upon the individual employees either due to oversight or for some other reason, so they were held to be entitled to switch over to pension scheme.

13. The learned counsel for the applicant further submitted that the applicant is a widow all alone and there is no one to look after her and the pension scheme being a welfare scheme, the same should not be denied to the applicant.

14. Opposing the contentions raised by the applicant, the learned counsel for the respondents referred to the additional documents annexed with the additional affidavit and submitted that the applicant

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under her own signatures vide Annexure-A to the additional affidavit submitted that she wants to continue with the CPF scheme and vide Annexure-B she herself sent list of those persons who had opted for CPF scheme and the list of those persons who had switched over to the GPF scheme. The said list was sent by the applicant under her own signatures and the name of the applicant appears at the top of the list who wanted to continue with the CPF scheme so now applicant cannot turn around and say that she had not opted for CPF scheme or the option was not a valid, which cannot be permitted at this stage.

15. Since the counsel for the applicant has also referred to OM dated 1.5.87 of the Ministry of Personnel, Public Grievances and Pensions which provided that in case of CPF scheme employees who were in service on 1.1.1986, but have since retired, should be deemed to have come over to the pension scheme on the date unless they specifically opt out to continue under the CPF Scheme. The counsel for the applicant has also submitted that the option was available in the case of the applicant only upto 30.9.87 and since the applicant had not opted upto 30.9.87 so the applicant should be deemed to have switched over to the pension scheme.

16. This contention of the applicant is also opposed by the respondents because according to the respondents though this OM has been issued by the Ministry for Government employees it did apply to employees who are working in the KVS which is a Society registered. The Society adopted this OM only in their



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51st meeting held on 31.5.88 in the meeting of the Board of Governors and this has been so admitted by the applicant in her rejoinder at paragraph 6. So on the lines the OM had given time to the Government employees till 30.9.87 after the issue of the OM. Similarly the Board of Governors had given time of one year to all the employees of KVS to exercise their option whether to continue in CPF or under the GPF-Pension Scheme and the option so exercised by the applicant vide Annexure-A and forwarded vide Annexure-B by the applicant shows that this was in consonance with the adoption of this Memo by the Board of their Governors in 51st Meeting and gave time of one year to the employees of the KVS so the applicant now cannot be allowed to turn around and withdraw her option. Thus this contention of the applicant has no merit.

17. The counsel for the applicant has also referred to Annexure A-8 vide which Section Officer of the KVS had written to the applicant asking her to give certain information and then to file the same. From this the applicant wanted to draw an inference that even on 16.10.1996 the option of the applicant had not been accepted and she should be deemed to have switched over to GPF-Pension Scheme. In my view this contention of the applicant has no merits because this is just a formality and the case of the applicant for pension was to be processed thereafter. If at all, on scrutiny, the applicant was found to be eligible under the Pension Scheme then only the same could be sanctioned. This document cannot be used to draw an inference of estoppel against the respondents as if they had admitted that the



applicant was entitled to the benefits under the GPF scheme. Thus all the contentions raised by the applicant has no merits.

18. No other contention has been raised before me.

19. In view of the above, OA has no merits and the same is dismissed. No costs.


(KULDEEP SINGH)
MEMBER (JUDG)

Rakesh