

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 17TH day of **MAY, 2019**.

ORIGINAL APPLICATION NO. 330/203/2019

HON'BLE MR ASHISH KALIA, MEMBER (J).

1. Jai Prakash Mishra aged about 65 years, S/o Shri Ram Shiromani Mishra, Permanent Address – Village & Post Sonawa, District Sultanpur, presently residing at Teliarganj, District Allahabad.Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Human Resources Development Department of Secondary and Higher Education (Integrated Finance Division) 234-C Shashtri Bhawan, New Delhi.
2. Commissioner Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahid Jeet Singh Marg, New Delhi.
3. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahid Jeet Singh Marg, New Delhi through Audit and Accounts Officer.
4. Joint Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahid Jeet Singh Marg, New Delh.
5. Principal, Kendriya Vidyalaya, Damoh (M.P.).Respondents

Advocate for the Applicant : Shri Vinod Kumar

Advocate for the Respondents : Shri Neeraj Singh, proxy counsel for Shri N P Singh

O R D E R

(Delivered by Hon'ble Mr. Ashish Kalia, Member-J)

Shri Vinod Kumar, learned counsel for the applicant and Shri Neeraj Singh, proxy counsel for Shri N P Singh, learned counsel for the respondents are present.

2. The brief facts of the case are that the applicant was initially appointed as Primary Teacher in Kendriya Vidyalaya Sangathan (KVS) on 03.10.1978 and retired on 30.06.2012 as TGT Biology. The Government of India had issued a memorandum dated 01.05.1987 specifying therein the Central Government Employees who are in service on 01.05.1987 shall be deemed to have come over the pension scheme unless they specifically opt for their continuation in CPF Scheme 1962. The Clause 3.2 of the

aforesaid memorandum specifically provides that the employee has an option to continue under the CPF Scheme. The option to continue in CPF Scheme was to be exercised and conveyed to the concerned head office by 30.09.1987. But the applicant had not submitted his options to remain continued under CPF Scheme, 1962. Since the applicant has never submitted any option to remain continued under the CPF Scheme after commencement of memorandum dated 01.05.1987 and as such as per the scheme the applicant is deemed to have been converted under the GPF cum Pension Scheme and as such right from the beginning the applicant is requesting the department to treat him GPF beneficiary, which is not being acceded to. Feeling aggrieved by the action of the respondents, he has approached this Tribunal with following reliefs:-

- “(i) To issue an order or direction in the suitable nature quashing the order impugned dated 11.06.2018 passed by the respondents department (Annexure No. A-1 to this original application with compilation no. I.
- (ii) To issue an order or direction in the suitable nature directing the respondents department to release the pension favour of the applicant along with market rate of interest within stipulated period, for which he is ready to surrender the amount received under the C.P.F. Scheme.
- (iii) To issue any order or direction, which this Tribunal may deem fit and proper in the facts and circumstances of the case.
- (iv) To award the cost of the application to the applicant.”

3. Notices were issued to the respondents. Sufficient time was granted to the respondents for filing reply but the same has not been placed on record. The applicant who has since been retired long back has been deprived of his legitimate right to pension under GPF cum pension scheme.

4. Learned counsel for the applicant has drawn my attention to Supreme Court judgement in the matter of **Union of India Vs S L Verma & Ors.** The relevant portion of the judgement is quoted below:-

“It is not disputed that the said respondents did not give their options by 30.09.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they

became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Condition of Service of Employees Regulation 1988) had become ipso-factor applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No. 14 has correctly arrived at conclusion that an anomaly would be created and in fact the said purported option on the part of respondent no. 1 to 13 was illegal when a request was made by respondent No. 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 01.01.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos. 1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF Scheme.”

5. In the aforesaid judgement, the Hon'ble Supreme Court has categorically stated the employee concerned is entitled for GPF cum Pension Scheme even if no option is submitted by him.

6. Similar views have been taken by the Hon'ble Jodhpur High Court in WP No. 5976 of 2017, Hon'ble Madras High Court in WP No. 28092 to 94 of 2015 and Hon'ble Delhi High Court in LPA 410/14 & connected matters.

7. In view of the above, this Tribunal has no hesitation to hold that the applicant is also entitled for pension under GPF cum Pension Scheme. Accordingly, the impugned order dated 11.06.2018 (Annexure No. 1) is quashed and set aside and it is directed that the applicant herein shall be granted the benefit under GPF cum Pension Scheme within a period of 90 days.

8. With the above direction the OA is allowed. No order as to cost.

**(ASHISH KALIA)
MEMBER-J**