

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA/310/01790/2017Dated the 23rd day of September, Two Thousand TwentyCORAM : HON'BLE MR. T. JACOB, Member (A)

P.Sundaramurthi,
Son of Parasuraman,
Worked as 'D' Man
'D' Technical Cadre,
Residing at Canara Bank Street,
Vayalur Village & Post,
Via Kalpakkam 603102.
Kancheepuram District.

....Applicant

By Advocate M/s. Balan Haridas

Vs

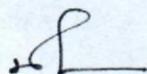
1. Union of India,
rep by its Secretary,
Department of Atomic Energy,
Government of India,
Mumbai.

2. Chairman,
AEC & Secretary DAE,
Anushakti Bhavan,
CSM Marg,
Mumbai 400001.

3. Indira Gandhi Centre for Atomic Research,
Department of Atomic Energy,
Government of India,
Kalpakkam.

....Respondents

By Advocate Ms. Shakila Anand



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- "i. to quash the order of the 3rd respondent dated 03.07.2017 bearing IGCAR/OA No. 604 of 2017/Admin (O&M)/2017/2003 and
- ii. consequently direct the respondents to shift the applicant from the CPF to GPF Scheme and paying pension from the date of his retirement viz., 31.01.2008, arrears of pension and
- iii. pass such other orders or directions as this Hon'ble Tribunal think fit in the circumstances of the case and render justice."

2. The brief facts of the case as stated by the applicant are as follows:

The applicant joined the 3rd respondent as Helper 'B' on 22.01.1973. He was confirmed in a technical category viz as Draughtsman/A w.e.f. 01.09.89 vide confirmation order dt. 11.05.1990. The applicant retired on superannuation w.e.f. 31.01.2008 while holding the post of Draughtsman/E. While joining, the applicant was given option to exercise either Contributory Provident Fund (CPF) or Pension Scheme (GPF). The applicant initially opted for CPF scheme. The respondents issued Memorandum dated 23.07.1996 permitting the employees to shift from CPF to GPF. But the said Memorandum was not communicated to the applicant. Thereafter, the respondent issued Memorandum in October 2000 giving another option to the employees to shift from GPF to CPF and vice versa. The applicant submitted application to shift from CPF to GPF. However, the same was rejected. Therefore, the applicant challenged the said order by filing OA.212//2008 wherein the said OA was dismissed by order

dated 27.03.2008. The same was upheld by the Hon'ble High Court and affirmed by the Hon'ble Supreme Court as well. However, the Hon'ble High Court in a similar matter filed by the applicant's co-employees in WP.21569/2013 passed order dated 03.11.2014 holding that they are entitled to exercise their option pursuant to the Office Memorandum dated 12.10.2000 and directed the respondents to examine their case and pass orders in accordance with the observations made therein. Thereafter, the applicant filed fresh representation dated 13.01.2016 to reconsider his case for pension and, thereafter, filed OA.604/2017, wherein the Tribunal by order dated 18.04.2017 directed the respondents to pass orders on his representation. The 3rd respondent by order dated 03.07.2017 rejected the representation of the applicant to switch over from CPF to GPF. Hence the applicant has filed this OA seeking the above reliefs, inter alia, on the following grounds:

- i. The orders of the 3rd respondent are illegal and contrary to law.
- ii. The Hon'ble High Court while allowing WP No. 21569 of 2013 had made it clear that the applicant is entitled to exercise his option pursuant to the Office Memorandum dated 12.10.2000 and the respondents were directed to pass appropriate order on the basis of the observation made in the order, if the applicant is eligible otherwise. Therefore, the issue with regard to application of Office memorandum dated 12.10.2000 in respect of the applicant has become final and the only thing which has to be decided by the respondent was whether the applicant is otherwise eligible viz., whether he had sufficient years of service for

drawing pension, whether there is any other bar for grant of pension etc. As such there is no bar for payment of pension to the applicant. While so, rejecting the case of the applicant for pension on the ground that office memorandum dated 12.10.2000 will not apply to the applicant is grossly illegal and it only shows total non application of mind on the part of the 3rd respondent.

iii. The total length of service rendered by the applicant is 35 years and he is eligible to draw pension once his option to shift from CPF to GPF is accepted. The Hon'ble High Court has held that Office Memorandum dated 12.10.2000 is applicable to the applicant and consequently the respondent should shift the applicant from CPF to GPF and as the applicant has rendered 35 years of service, the respondents should sanction the pension. Instead of that the 3rd respondent in violation of the direction issued by the Hon'ble High Court in WP No. 21569 of 2013 has passed the impugned orders.

iv. The respondents had been now and then issuing Office Memorandum permitting the employees to exercise their option to shift from CPF to GPF and vice versa. Several similarly placed employees of Central Government were allowed to switch over to GPF Scheme and therefore, there is no seriousness attached to the cut off date prescribed in the Office Memorandum dated 12.10.2000. In fact Vikram Sarabhai Space Centre (VSSC) has issued Office Memorandum dated 08.05.2006 and permitted the employees to exercise their option to shift from CPF to GPF vice versa on or before 30.06.2006 and the cut off date of considering 20 years of qualifying service is 01.08.1992. If the same cut off date is adopted the applicant is eligible for shifting from CPF to GPF Scheme. In such circumstances, the 3rd respondent ought to have permitted the applicant to shift from

CPF to GPF.

v. The order of the 3rd respondent dated 03.07.2017 runs contrary to the order of the High Court in WP No. 21569 of 2013. The Hon'ble High Court in all terms that held that the employees are covered under the Office Memorandum dated 12.10.2000. While so, the 3rd respondent grossly erred in passing the order dated 03.07.2017 by holding that the applicant is not to exercise his option to switch over to GPF under Office Memorandum dated 12.10.2000.

vi. In the order dated 03.07.2017, the 3rd respondent has stated that the Office Memorandum dated 08.05.2006 issued by the Department of Space will not apply to Department of Atomic Energy, as they are two different departments. It is not in dispute these two departments are organs of Union of India and the employees working in both the departments are the employees of the Central Government. While so, there cannot be different yardsticks for describing the cut off dates. What is applicable to Vikram Sarabhai Space Centre will apply to other employees in other departments.

vii. The respondent has issued Office Memorandum dated 04.08.2007 bearing No. 2/1/99-SCS/6240 and in that it is stated as follows:

“(1) Scientific employees who joined the service prior to 01.08.1992 are eligible to exercise the option to change over the pension scheme at any time before retirement as per DAE OM No. 37/55/63-Tech.II(A) dated 17.04.1964. On the same analogy, the Technical Employees who had been promoted to the Scientific Post prior to 01.08.1992 are also eligible to exercise the option to change over to pension scheme at any

time before retirement.

(2) Scientific employees who joined DAE on or after 01.08.1992, would be eligible to exercise option within 20 years of qualifying service to change over to pension scheme as per OM No. 4/1/187-P&PW (PIC-II) dated 23.07.1996. On the same analogy, a technical employee promoted to scientific post on or after 01.08.1992 shall also be eligible to opt to pension scheme before completing 20 years of qualifying service as Scientific Officer".

Thus the respondent department has permitted the scientific employees to switch over from CPF to Pension or vice versa any time prior to retirement. However, a different yardstick is being adopted in respect of the applicant and similarly placed employees. This amounts to hostile discrimination and in violation of Article 14 and 16 of the Constitution of India.

viii. The employees switched over from CPF to GPF scheme, as the later on was more beneficial and on that basis several employees are drawing pension. While so, denying the same to the applicant is discriminatory, inspite of applicant making application to shift to GPF.

ix. The applicant has specifically pleaded that the 1st respondent by using discretionary power permitted three Scientific Officers in DAE to switch over the GPF by re-exercising the option. This fact has not been denied by the respondent.

x. The 2nd respondent is the authority who had used its discretionary power and permitted three Scientific Officers to switch over from CPF and GPF. The representation has been directed to be considered by this Hon'ble Tribunal by an order

dated 18.04.2017 in OA 604 of 2017 and direction was issued to pass orders. While so, the 3rd respondent has once again passed the impugned order dated 03.07.2017, without the appeal being considered by the 2nd respondent. Thus the order passed on 03.07.2017 is erroneous.

xi. The applicant's right to switching over from CPF to GPF has been crystallized by the order of the Hon'ble High Court in WP No. 24569 of 2013 and therefore the action of the respondent in passing the impugned order amounts to gross contempt of the said order.

xii. The action of the respondent in denying pension to the applicant is discriminatory and on the erroneous assumption that Office memorandum dated 12.10.2000 will not apply to the applicant.

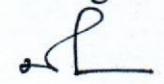
xiii. When many employees have been permitted to switch over from CPF to GPF there is no reason for the respondents to deny the same benefits to the applicant.

xiv. The very cut off date prescribed in Office Memorandum dated 12.10.2000 is not conclusive and final. The respondents and other Government Departments have been changing the cut off date to enable the employees to switch over to GPF as the same was more beneficial. While so, the respondents cannot deny the switch over to the applicant from CPF to GPF and such an action is unjust and unfair and grossly discriminatory.

xv. The Office Memorandum dated 02.12.1996 was not put on notice to the applicant and there is no material to show that the applicant had no knowledge about it. If the same had been brought to the notice of the applicant, he would have exercised the option to switch over from CPF to GPF. Only since such an opportunity was not in the notice of the applicant, he had to

exercise his option when the next office memorandum dated 12.10.2000 was issued.

3. The respondents have filed reply. It is submitted that the OA is not maintainable in law and on facts. As such the same is liable to be dismissed in limine. The sum and substance of the OA is that the applicant was under Contributory Provident Fund (CPF) Scheme. Office Memorandum dated 12.10.2000 came into existence by providing the final opportunity of exercising option to all the technical personnel of the Department of Atomic Energy either to continue under CPF scheme or switch over to pension scheme subject to the condition that such option should be exercised within six months from the date of the Office Memorandum. The Office Memorandum was placed on all notice boards of this Research Centre besides circulation to all Group Directors/Heads of Divisions/Heads of Sections and Recognized Associations of this Centre. In response to the said Office Memorandum, 85 Technical Employees had exercised their option and switched over to pension scheme from CPF scheme. The applicant admits the introduction of the said OM but stakes his claim from switching over to pension scheme only in the year 2007 according to his own pleadings after a lapse of 7 years. In view of these facts the applicant is not entitled for relief sought for by him on the face of it. The impugned orders are in accordance with law. The applicant cannot take recourse to the orders in WP No. 21569 of 2013 and stake his claim for switching over from CPF to Pension Scheme as he had submitted the option to switch over to pension scheme long



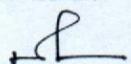
after the time period provided by the DAE OM dated 12.10.2000. The applicant neither was eligible to switch over to pension scheme pursuant to OM dated 12.10.2000 nor submitted his option within the time limit. It is nothing but abuse of process of law and court. For all these reason the applicant's claim is liable for summary rejection / dismissal. As a matter of fact, the law is settled in respect of the same Office Memorandum dated 12.10.2000 holding that there is no provision for extending the period fixed for exercising option and this has been categorically held by Hon'ble High Court of Madras in the judgment passed in WP No. 29371 of 2008 dated 02.11.2011 filed by the applicant and which has been confirmed by Hon'ble Supreme Court in SLP No.26212 of 2012.

Hence the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder more or less reiterating the averments made in the OA.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. Admittedly this is the third round of litigation before this Tribunal. The applicant had earlier filed OA.212//2008 challenging the rejection of his representation dated 12.10.2007 for conversion to GPF Scheme wherein the said OA was dismissed by order dated 27.03.2008. Thereafter he filed OA.604/2017, wherein this Tribunal by order dated 18.04.2017 directed the respondents to pass orders on his representation. The 3rd respondent by order dated 03.07.2017 rejected the representation of the applicant to switch over from CPF to GPF.



Hence the Original Application.

7. The grievance of the applicant is that while the Hon'ble High Court in all terms had held that the employees are covered under the OM dated 12.10.2000 which has become final, the applicant having put in 35 years of qualifying service is eligible to draw pension. The Vikram Sarabhai Space Centre has issued OM dated 08.05.2006 permitting the employees to exercise option to shift from CPF to GPF on or before 30.06.2006 and the cut off date for considering 20 years of qualifying service is 01.08.1992 but the respondents have failed to permit the applicant to shift from CPF to GPF. The 2nd respondent had used its discretionary power and permitted three Scientific Officers to switch over from CPF to GPF ignoring the claim of the applicant. Further grievance of the applicant is that there had been several OMs permitting exercise of option to switch over from CPF to GPF. For the Scientific staff, there is no time frame to exercise option and the same can be exercised till the date of retirement. Prescribing cut off date for technical staff alone is unreasonable and amounts to gross discrimination. Memorandum issued by the DOP&PW dated 12.10.1992 allows one more option to employees who had not completed 20 years of service as on 01.08.1992 to switch over from CPF to GPF Scheme. The said Memorandum was not put on notice to the applicant. However, by the subsequent Memorandum dated 23.07.1996 the earlier Memorandum dated 12.10.1992 was kept under abeyance. Even the 23.07.1996 notification was not circulated to the applicant. Only the



subsequent Memorandum dated 12.10.2000 was circulated. As per the said Memorandum, Technical personnel who had joined service prior to 01.08.1992 and who had not completed 20 years qualifying service as on 23.07.1996 were permitted to shift from CPF to GPF Scheme. Had the respondents put on notice the OM dated 02.12.1996, the applicant would have exercised his option to switch over to GPF scheme and would not have exercised his option based on the OM dated 12.10.2000. Further there cannot be two different yardsticks in the matter of mode of exercising the option viz. Scientific employees have been permitted to exercise their option to switch over from CPF to GPF till their retirement, the same right has to be extended to the technical staff as well.

8. Regarding the appointment of the applicant, there is no dispute to the fact that the applicant was appointed as Helper B on 22.01.1973. There is no dispute to the fact that when the applicant joined his services and on confirmation he preferred CPF Scheme on 21.05.1990. Further it is also admitted fact that the Department of Pensions & Pensioner Welfare (DP&PW) issued O.M. dated 12.10.1992 wherein it was provided that the S&T Personnel will have one option to be exercised any time but not later than completion of 20 years of qualifying service to switch over from CPF to Pension Scheme or to retain the CPF Scheme as they may wish. It is also admitted fact that the DP&PW reviewed its earlier O.M. dated 12.10.1992 and issued another O.M. Dated 23.07.1996 wherein it has been decided to maintain the status quo ante. It is further clear from the pleadings that DAE issued OM dated 12.10.2000, wherein



it has been decided to provide one more option for switching over to GPF/Pension Scheme from CPF to all Technical Personnel who joined services prior to 01.08.1992 and have not completed 20 years service as on 23.07.1996 and are still in CPF. In the said O.M. the option was to be exercised within 6 months from the date of issuance of O.M. It is admitted fact by the applicant that the applicant had not exercised option, within prescribed 6 months from the date of issuance O.M. Although the applicant exercised his option at the time of his confirmation but later on the applicant has not exercised his option for switching over from CPF to GPF/Pension Scheme in the prescribed period.

9. The applicant submitted his representation / application for conversion to pension scheme on 12.10.2007 after a lapse of seven years of the issue of the OM dated 12.10.2000. Hence his representation was disposed of vide order dated 11.02.2008 informing that there is no provision to provide 2nd option as the said OM dated 12.10.2000 was not applicable to him. Subsequently the applicant filed OA No. 212 of 2008 before this Hon'ble Tribunal against the order dated 11.02.2008 wherein this Hon'ble Tribunal vide order dated 08.05.2008 dismissed the Original Application filed by the applicant which was upheld by Hon'ble High Court in WP No. 29370 of 2008 and Supreme Court in SLP(C) No. 26212 of 2012.

10. The applicant was not a petitioner in the WP No. 21569 of 2013 and he is not identically placed with the petitioners therein, in as much as the applicant had not submitted his option within the six months from the date of issue of OM



dated 12.10.2000. It was also not one of the grounds of the applicant in his earlier OA/WP/SLP that he had submitted his option within six months and therefore the order passed in that Writ Petition No.21569/2013 is not applicable to the applicant's case. In a plethora of cases, Hon'ble Supreme Court of India has held that the prescription of the time limit is within the policy realm.

11. The employees were allowed to switch over from CPF to Pension Scheme in terms of Statutory Rules and OMs issued on the issue from time to time. The decisive factors were whether the applicant has submitted the option within the prescribed time limit specified in the Office Memorandum No. 2/1/99/SCS/665 dated 12.10.2000 and is fulfilling the conditions stipulated in the said Office Memorandum. The option to switch over to pension scheme is based on the conditions specified in the OMs and not merely on the length of service. Since the applicant has not fulfilled either of the stipulated conditions, he was not permitted to switch over from CPF to Pension scheme. Hence the question of cut off date or changing the cut off date does not arise. Supreme Court of India in the UoI vs M/s. Parameswaran Match Works 1974 AIR 2349, 1975 Sec (2) 573 has held that "the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances". Hon'ble Apex Court in the case of UOI Vs. P.N.Menon, 1994 SCC (L&S) 860, held that "any revised scheme if implemented with a cut off date, which can be held to be reasonable and rational need not be held to be invalid". In one of the recent

judgements i.e. Rajasthan Rajya Vidyut Vitran Nigam Ltd. vs. Dwaraka Prasad Koolwal (2015) 12 SCC 51. The Apex Court has in respect of such switch over from CPF to pension scheme has held as under:-

"No employee can switch over back and forth from one scheme to another as per his convenience. Once an employee has chosen to be a part of a particular scheme, he continues to remain a member of that scheme unless an option to switch over to another scheme is given to him."

12. Admittedly, the applicant has chosen not to avail of the opportunity for such a switch over within the time calendered in the O.M.. It is also clear from the affidavit of the replying respondents that wide publicity has been given regarding the OM dated 12.10.2000 and it is clear from the affidavit of the replying respondents that many personnel have opted for pension scheme as per OM dated 12.10.2000. The OM dated 23.07.1996 was communicated to all the employees of IGCAR vide IGCAR Circular No. IGCAR/Gen./P1/96 dated 02.12.1996 by displaying on all Notice Boards in IGCAR with copy to all Group Directors / Associate Directors / Heads of Divisions / Heads of Sections. So the submission made by the applicant that there was no wide publicity regarding OMs dated 23.07.1996 and 12.10.2000 are not sustainable and that cannot be believed at all.

13. The Scientific and Technical cadres are different based on the nature of duties, educational qualification, managerial responsibilities handled and hence

cannot be treated as similarly placed. Hence, the adoption of different yardsticks based on intelligent differentia is well within the four corners of the Constitution and hence are not a violation of Articles 14 or 16. Further, as evident from various memoranda referred to in the preceding paragraphs, there have always been separate schemes for Scientific and Technical personnel.

14. Further, no comparision can be made with the employees of the Department of Space as the purpose and functioning of both the departments are different. Having not acted on the OM dt. 23.07.1996 and 12.10.2000 thereby not availing the opportunity of exercising fresh option, the applicant is now wrongly comparing his case with that of the Dept. of Space.

15. The applicant is not entitled to switch over to pension scheme (GPF) from CPF scheme due to the following grounds:

a. He had opted specifically to continue in CPF scheme at the time of confirmation.

b. He had taken conscious decision to opt for CPF scheme "after having understood the comparative advantages and disadvantages of Contributory Provident Fund (CPF) (non pensionable scheme) and General Provident Fund (GPF)".

c. The OA No. 212 of 2008 filed and appealed by the applicant before the Hon'ble High Court of Madras against the order of this Hon'ble Tribunal dated 08.05.2008 in OA No. 212 of 2008 was upheld and dismissed by the Hon'ble High Court



vide its order dated 02.11.2011. Further on appeal before Hon'ble Supreme Court of India against the order dated 02.11.2011 of this Hon'ble High Court by filing Special Leave Petition (SLP) No. 26212 of 2012 (CC 7777/2012) was dismissed by Hon'ble Supreme Court, New Delhi vide its order dated 23.10.2013.

d. Nodal Ministry DP & PW vide their note no. 20/1/200-P&PW(F) dated 25.01.2017 conveyed the orders of the Government of India for not agreeing to the switch over, communicated the following reasons for the decision viz.,

i. The technical cadre employees of DAE had opted for CPF scheme on the basis of OMs issued by this Department knowing well that the option once exercised shall be final;

ii. All new entrants to Government services w.e.f. 01.01.2004. are no longer covered by the pension scheme.

16. In view of the above, I am of the view that there is no merit in this OA and resultantly this OA is dismissed. No order as to costs.