

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

**OA/020/01329/2014, OA/021/00014/2015, OA/021/00253/2015,
OA/021/00632/2015 & OA/020/01413/2014**

Date of CAV : 01.12.2020.

Date of Pronouncement : 21.12.2020.



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

OA No.1329/2014

1. H.Venkatesh S/o Late Harihara Rao,
Aged about 62 years, Occ : Deputy Director (Trg)
(Retired), Central Institute of Tool Design,
Hyderabad, R/o Flat No.502, Kalyani Residency,
Hyderabad-27.
2. K.V. Subramanyam S/o Late K. Krishna Murthy,
Aged about 60 years, Occ : Retd. Secretary CITD,
Central Institute of Tool Design, Hyderabad,
R/o H.No.3-26, Chaitanyapuri, Hyderabad.
3. P. Nageswara Rao S/o Late P.Akkaiah,
Aged about 70 years, Occ : Retd. Director,
Central Institute of Tool Design, Hyderabad,
R/o H.No.8-3-319/B/24/3, Yellareddyguda,
Hyderabad – 500073.
4. R. Jai Hind Babu S/o Late Sri R. Anthaiah,
Aged about 64 years, Occ : Retd. Asst. Director (Accts.),
Central Institute of Tool Design, Hyderabad,
Hyderabad, R/o H.No.20-1-253, Puranapool
Inside Old Bridge, Opp. Vithaleswara Temple,
Hyderabad-500 002. ...Applicants in OA 1329/2014

(By Advocate : Mr.Dr.A.Raghu Kumar)

Vs.

1. Union of India rep by its Secretary,
Ministry of Micro, Small and Medium Enterprises,
Nirman Bhawan, 7th Floor, Moulana Azad Road,
New Delhi-110108.

2. The Chairman, Central Institute of Tool Design & Development Commissioner, Micro, Small and Medium Enterprises, Ministry of MSME, Nirman Bhawan, New Delhi.
3. The Principal Director, Central Institute of Tool Design, Balanagar, Hyderabad-500037.
4. The Secretary, Department of Pension and Pensionary Welfare, Government of India, New Delhi.

....Respondents in OA 1329/2014

(By Advocate: Mrs. K.Rajitha, Sr. CGSC)

OA No.14/2015

1. M. Ramesh Babu S/o Late M. Achutha Rama Rao, Age about 59 years, Central Institute of Tool Design, Balanagar, Hyderabad – 500037.
2. P. Prabhaker Rao S/o Late P. Dakshina Moorthy, Age About 59 years, Central Institute of Tool Design, Balanagar, Hyderabad – 500037.
3. T. Vazeer Kumar S/o Late Sri T. Mangeram, Age about 59 years, Central Institute of Tool Design, Balanagar, Hyderabad – 500037.
4. Y. Prasad S/o Late Sri Y. Nageshwar Rao, Age about 57 years, Central Institute of Tool Design, Balanagar, Hyderabad – 500037.
5. C. Rajeswara Rao S/o Late Sri C. Satyanarayana, Age about 57 years, Central Institute of Tool Design, Balanagar, Hyderabad – 500037.
6. K. Babu Lal S/o Late Sri Narsoji, Age about 57 years, Central Institute of Tool Design, Balanagar, Hyderabad – 500037.



7. K.L.V. Holkar, S/o Late Sri KVSSR Narayana Sarma,
Age about 57 years,
Central Institute of Tool Design,
Balanagar, Hyderabad – 500037.

8. M. M. Suhasini w/o Sri John,
Age About 57 years,
Central Institute of Tool Design,
Balanagar, Hyderabad – 500037.

9. B.V. Padmavathi W/o B.V. Subba Rao,
Age about 54 years,
Central Institute of Tool Design,
Balanagar, Hyderabad – 500037.

10. K.Narasimha Reddy S/o Late Sri K. Narayan Reddy
Age about 57 years,
Central Institute of Tool Design,
Balanagar, Hyderabad – 500037.

11. T. Ashok Kumar S/o Late T. Tangaraj,
Age about 54 years,
Central Institute of Tool Design,
Balanagar, Hyderabad - 500037

(By Advocate : Mr. M. Venkanna)

Vs.

1. Union of India represented by its Secretary,
Ministry of Micro, Small and Medium Enterprises,
Nirman Bhawan, 7th Floor,
Moulana Azad Road, New Delhi – 110108.
2. **The Chairman,**
Central Institute of Tool Design &
Development Commissioner,
Micro, Small & Medium Enterprises,
Ministry of MSME, Nirman Bhawan, New Delhi.
3. **The Principal Director,**
Central Institute of Tool Design,
Balanagar, Hyderabad – 500037.
4. **The Secretary,**
Department of Pension and Pensionary Welfare,
Government of India, New Delhi.Respondents in OA 14/2015

(By Advocate : Mrs.K.Rajitha, Sr.CGSC)

OA No.253/2015

1. Sri Mahender Persha S/o Venkat Swamy Persha,
Aged 73 years, Retired Dy.Director,
Central Institute of Tool Design,
Ministry of Micro, Small & Medium Enterprises,
Govt. of India, Balanagar, Hyderabad,
R/o No.8-2-293/82/A/274, Road No.25,
Jubilee Hills, Hyderabad-500 033, T.S.
2. Sri V.Krishna Swamy S/o M.K.Venkataraman,
Aged 60 years, Retired Director,
Central Institute of Tool Design,
Micro, Small & Medium Enterprises,
Govt. of India, Balanagar, Hyderabad,
R/o Plot No.20A, Priya Colony, Phase-I,
Kakaguda, Secunderabad-500 015.
3. M.Swamy S/o M.Narayana,
Aged 65 years, Retired Technician,
Central Institute of Tool Design,
Ministry of Micro, Small & Medium Enterprises,
Govt. of India, Balanagar, Hyderabad,
R/o No. 10-39/1, Vinayak Nagar, Balanagar,
Hyderabad - 500 042.
4. Smt.N.Durga Sarma W/o Sri N.Markandeya Sarma,
Aged 60 years, Retired Asst. Administrative Officer,
Central Institute of Tool Design,
Ministry of Micro, Small & Medium Enterprises,
Govt. of India, Balanagar, Hyderabad,
R/o No.2-14-120, # 505, Sathurki Apartments,
Beerappa Gadda, Uppal, Hyderabad-500 039, T.S.
5. Sri B. Laxmaiah S/o Late Sri P. Bathaiah,
Aged 65 years, Retired Assistant,
Central Institute of Tool Design,
Ministry of Micro, Small & Medium Enterprises,
Govt. of India, Balanagar, Hyderabad,
R/o 14/78, Laxmi Durga Hills, Badangpet,
Saroornagar, R.R.District, Hyderabad-500 058.
6. Sri M.Balaraj S/o late Sri M.Balaiah,
Aged 63 years, Retired Assistant,
Central Institute of Tool Design,
Ministry of Micro, Small & Medium Enterprises,
Govt. of India, Balanagar, Hyderabad,
R/o 18-4-143/A/42, Gayatrinagar Colony,
Kalvagadda, Charminar, Hyderabad-500 053 (TS).

...Applicants in OA 253/2015

(By Advocate : Mr. K. Siva Reddy)

Vs.

1. Union of India, Represented by its Secretary, Ministry of Micro, Small & Medium Enterprises, Nirman Bhavan, 7th Floor, Moulana Azad Road, New Delhi – 110 108.

2. The Chairman, Central Institute of Tool Design & Development Commissioner, Micro, Small & Medium Enterprises, Ministry of MSME, Govt. of India, Nirman Bhavan, New Delhi.

3. The Principal Director, Central Institute of Tool Design, Ministry of Micro, Small & Medium Enterprises, Govt. of India, Balanagar, Hyderabad,

4. The Secretary, Department of Pension & Pensioners' Welfare, Ministry of Personnel, P.G. & Pensions, Govt. of India, North Block, New Delhi.

... Respondents in OA 253/2015

(By Advocate : Mr.T.Hanumantha Reddy, Sr.PC for CG)

OA No.632/2015

D.S.N.Murthy S/o D.Satyanarayana,
Aged 64 years, Occ : A.A.O (Retired),
O/o MSME Tool Room (Formerly Central Institute of Tool Design),
R/o Flat No.401, Sharan Enclave, Vinayak Nagar,
Balanagar, Hyderabad-42.

... Applicant in OA No.632/2015

(By Advocate: Mr. D. Ramakrishna)

Vs.

1. The Union of India rep by its Secretary, Ministry of Micro, Small and Medium Enterprises, Nirman Bhavan, 7th Floor, Moulana Azad Road, New Delhi – 110108.

2. The Chairman, The MSME Tool Room (Formerly Central Institute of Tool Design), And Development Commissioner, Micro, Small and Medium Enterprises,

Ministry of MSME, Nirman Bhavan,
New Delhi – 110108.

3. The Principal Director,
The MSME Tool Room (Formerly Central Institute of Tool Design),
Balanagar, Hyderabad-500 037.

4. The Secretary,
Department of Pension & Pensioners Welfare,
Ministry of PG & Pensions, Government of India,
North Block, New Delhi.

...Respondents in OA 632/2015

(By Advocate : Mrs.K.Rajitha, Sr. CGSC)



OA 1413/2014

1. Syed Ather Hussain S/o Late Sri Syed Mahamood Hussain,
Aged about 61 years, Occ : Technician, Gr. I (Retd.),
R/o H.No.19-2-29/A/17, I-Floor,
Model Town Colony, Jahanuma, Hyderabad.
2. Mohd. Abdul Qadeer S/o Late Sri Mohd.A.Rasool,
Aged about 60 years, Occ : Technician, Gr. I (Retd.),
R/o 20/156/B 41, Radhakrishna Housing Society,
Indian Gas Godown, Borabunda, Balanagar, Hyderabad.
3. Syed Ghous S/o Lat Sri Syed Azameemuddin,
Aged about 60 years, Occ : Semi Skilled Worker (Retd.),
R/o 10-2-33/1, Bond Line, Bazarghat, Hyderabad-500047.
4. R.Jaganmohan Rao S/o Late Sri R.Jagannadha Swamy,
Aged about 62 years, Occ : Technician, Gr. I (Retd.),
R/o LIG-539, Road No.3, Behind Sivalayam,
KPHB Colony, Kukatpally, Hyderabad-72.
5. I.Thomas S/o Late Sri I.David,
Aged about 60 years, Occ : Semiskilled Worker (Retd.),
R/o H.No.7-8-270/D, Goutham Nagar,
Ferozguda, Secunderabad-500 071.
6. Mohd.Zaheeruddin S/o Late Sri M. Ahmed Ali,
Aged about 60 years, Occ : Technical Gr.I (Retd.),
R/o H.No.9-4-86/142, Salarjung Colony,
Charch and Jama Masjid Road, Tolichowki,
Golconda, Hyderabad-500008.



7.R. Stephen S/o Late Sri Stephen,
 Aged about 63 years, Occ: Engineer Gr.II I (Retd.),
 R/o Plot No.27, Phase-II, E.C.Nagar, HCL Post,
 Cherlapally, Hyderabad-500 051.

8. S. Srinivasa Rao S/o Sri S. Venkata Swamy,
 Aged about 65 years, Occ : Accountant (Retd.),
 R/o 7-1-621/493/201, Deekshitha Residency,
 SRT-165, S.R.Nagar, Hyderabad-500 038.

9. Chandrasekhar Yadav S/o Late Sri Harishchandra Yadav,
 Aged about 61 years, Occ : Accountant (Retd.),
 O/o Central Institute of Tool Design, MSME,
 Balanagar, Hyderabad-500 037.

10.K.B. Laxmaiah S/o Late Sri K. Bangaraiah,
 Aged about 62 years, Occ : Engineer Gr.I (Retd.),
 R/o 5-227/13, Chandranagar, Opp :Vasanth Enclave,
 Chintal, Tirumalagiri, HMT Township, Hyderabad.

11.S. Rajarathnam S/o Late Sri S. Jayaramaiah,
 Aged about 65 years, Occ : Technician Gr.I (Design)
 (Retd.), R/o H.No.10-148/8/A, Sainagar,
 Balanagar, Hyderabad-500 042.

12.K. Vijaya Raj S/o Late Sri K. Manikyam Sastry,
 Aged about 69 years, Occ : Engineer Gr. I(Retd.),
 R/o 3-5-43/2, Vivekananda Nagar, Near Andhra Bank,
 Kukatpally, Hyderabad-500 072.

13.U.Kshirasagar S/o Lae Sri U.Balakrishna,
 Aged about 64 years, Occ : Dy.Director (Retd.),
 R/o 30-272/3/1/2, Santhoshima Nagar Colony,
 Safilguda, Malkajgiri, Ramakrishna Puram, Hyderabad – 500 056.

14.M. Akram Basha S/o Late Sri Md. Mohideen,
 Aged about 69 years, Occ : Sr. Draughtsman (Retd.),
 O/o Central Institute of Tool Design, MSME,
 Balanagar, Hyderabad-500 037.

15.K. Murali S/o Late Sri M. Shankaraiah,
 Aged about 62 years, Occ : Engineer Gr.III (Retd.),
 R/o 5-4-71/1. Sarojini Devi Road, Opp : Masjid,
 Kukatpally, Hyderabad – 500 072.

16.N. Chakradhara Rao S/o Late Sri N. Sreeramulu,
 Aged about 66 years, Occ : Engineer Gr.II (Retd.),
 R/o Plot No.78/A, Sai Nagar, Balanagar,
 Hyderabad – 500 042. ...Applicants in OA No.1413/14

(By Advocate: Mr. G.R. Sudhakar for Mr. Siddartha Sarma)

Vs.

1. Union of India Rep by its Secretary,
Ministry of Micro, Small and Medium Enterprises,
Govt. of India, Nirman Bhavan, 7th Floor,
Moulana Azad Road, New Delhi – 110108.



2. The Chairman,
Central Institute of Tool Design
& Development Commissioner,
Micro, Small & Medium Enterprises,
Ministry of MSME, Nirman Bhavan,
New Delhi – 110108.

3. The Principal Director,
Central Institute of Tool Design,
Balanagar, Hyderabad-500 037.

4. The Secretary,
Department of Pension & Pensioners Welfare,
Ministry of Personnel, P.G. & Pensions,
Government of India,
North Block, New Delhi.

....Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

COMMON ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OAs have been filed for non grant of Pension and Pensionary benefits as per Dept. of Pension and Pension Welfare letter dated 1.5.1987. The OAs have been filed by the applicants seeking the same relief from the same respondents and therefore a common order is passed.

3. The brief facts as narrated by the applicants, are that some of the applicants are serving and some have retired from the respondents organization, which was established in 1968 and registered as an autonomous society on 31.3.1970 under A.P Public Societies Registration Act with the name Central Institute of Tool Design (CITD), to be governed by the Memorandum of Association plus the rules and regulations framed. The 4th CPC has recommended that all CPF beneficiaries who were in service on 1.1.1986 shall be deemed to have come under the Pension Scheme unless they opt to continue under CPF and accordingly DOP&PW issued OM dated 1.5.1987, which states that all the CPF beneficiaries who were in service as on 1.5.1987 and are still in service on the said date will be deemed to have come over to the Pension Scheme. Employees have to exercise their option by 30.9.1987, otherwise they will be deemed to continue under CPF. The orders apply to all Civilian Government Employees subscribing to CPF rules (India) 1962. Other Organisations like Railways, Navy etc having their own Contributory Provident fund schemes have to consult DOP&PW and issue similar orders on lines of CPF rules

1962. In its first meeting the governing council of CITD on 24.4.1970 decided to adopt the GOI rules in respect of its employees till service rules are framed and the CPF (Contributory Provident Fund) scheme on lines existing in SIET. Under RTI Act, information was gathered from autonomous bodies like Counsel for Research in Homeopathy, Central Counsel for Research in Yoga and Naturopathy, National Institute of Rural Development etc wherein the Pension Scheme covered by letter dated 1.5.1987 was adopted. When the respondents were confronted with this information, their view was to examine the issue as per the rules which apply to their organisation. Applicants submitted representations which were forwarded to the Chairman, CITD and AS/DC (MSME) in Nov. 2013. Later the representations were rejected stating the Governing Council decided in its meeting held on 10.3.1971 to cover its employees under CPF scheme.

4. The contentions of the applicants are that The Hon'ble Principal Bench has allowed OA 2037/2008 and directed the National Water Development Agency on 8.8.2010 to implement the Pension Scheme. The Hon'ble Delhi High Court has allowed the W.P (C) 11371/2006 covering a similar matter relating to Coal India Ltd on 4.4.2013. The Governing Counsel in its meeting on 24.4.1970 has resolved to adopt GOI rules till its own service rules for the institute are framed. However, the said resolution is superseded by OM of May 1987. Therefore, the impugned orders issued negating the request made are illegal and arbitrary. Pension and Pensionary benefits are governed by the statutory rules under Article 309 of the Constitution. Pension is a property under Article 300-A of the Constitution



and shall be governed by GOI instructions and in the instant case by OM of May 87. When other autonomous bodies have followed the pension scheme, there is no reason as to why the respondents should not follow the same. The 2nd respondent without sending the proposal to the 1st respondent for taking a policy decision, has been tossing the issue between Departments, which are not competent to decide. DOPT has issued orders vide memo dated 26.11.2012 based on the judgment of the Hon'ble Delhi High Court in WP (C) No.15695/2000 for non statutory departmental candidates subject to the condition of refunding the amount received under CPF with GPF interest. Applicants are willing for the same. Respondents should not discriminate the employees in view of the favourable decisions taken in respect of the issue by other autonomous bodies. The request of applicants has been rejected without application of mind. Further, respondents have adopted all the rules and regulations of the GOI and have extended the provisions of CCS (CCA) Rules, the rule of reservation, pay structure, DA, HRA, CCA, TA etc to the CITD employees. Besides, when the applicants joined the respondents, they were covered by CPF and on confirmation against a permanent post, the employees are deemed to have opted for GPF, unless they exercise an option to continue with CPF. The retiral life of the applicants is adversely affected by many factors like inflation, low rate of interest on CPF, etc and the denial of pension scheme will be another aggravating factor. The policy of the Government is to ensure that the pensioners' live decently, independently and with self respect. Pension is not a matter of grace.



5 Respondents, per contra in the reply statements filed, state that the institute is managed by the Governing Council based on the rules and regulations framed for the institute, with Additional Secretary & Development Commissioner, Micro, Small & Medium Enterprise (MSME), GOI, as its Chairman, and its decision is final. The Governing Council in its meeting dated 30.7.1971 approved the CPF rules for CITD duly vetted by the Director, Internal Finance, Ministry of Industrial Development for implementation w.e.f 1.4.1971. The letter dated 1.5.1987 was issued to Ministries/Departments and not to autonomous bodies. Matter was taken up with the Development Commissioner for due examination in the years 1988 & 1989 and later, placed before the Governing Council on 26.2.1988 wherein it was decided to recommend to GOI for implementing the pension scheme for CITD and in turn, it was informed by the Ministry on 24.10.1988, that the Internal Finance Wing has negated the proposal. Respondents stressed the fact that autonomous bodies are not to be treated at par with the State as per law. Rules framed for Govt. employees shall not be applicable to the employees of the autonomous bodies when the latter have their own rules. Hon'ble Supreme Court judgment in batch of cases in T.M.Sampath v UOI, support this contention. The letter dated 1.5.1987 is applicable only to Central Govt. employees who were subscribing to the CPF under the CPF (Rules) 1962 where as applicants are members of CITD contributory fund scheme and hence, are not eligible to switch over to the pension scheme. The claim that the OM dated 1.5.1987 is applicable to all Govt. organs is incorrect as clarified by the Hon'ble High Court of Delhi in U.O.I. and Ors v T.M.Sampath and ors in W.P (C) 3197 of 2010, which was upheld by the Hon'ble Supreme Court. The employees of the CITD



are neither civil Govt. employees nor are they contributing to Central Govt. Provident fund as held by Hon'ble Supreme Court in T.M.Sampath case. The letter dated 1.5.1987 is meant for civilian govt. employees and to those organisations which are transiting from CPF to pension, but not to autonomous bodies and its employees. It has been clarified a number of times that letter dated 1.5.1987 is not applicable to autonomous bodies and the latest clarification is vide Ministry of Environment, Forest & Climate Change OM dated 2.12.2014. Rule 45 delegates the Governing Council the authority to exercise all the powers of the society and lay down service rules under rule 46 (xi) (a). It has been clarified by GOI vide letter dated 24.10.1988 that the change over from own institutional contributory provident fund scheme to pension scheme for non government employees of autonomous bodies has not been the intention of the GOI when implementing 4th CPC. Rules applicable to other organisations like Railways, Indian Ordnance Factories or Indian Naval Dockyards do not apply to CITD. There is no concept of deemed to have accepted the pension scheme on becoming permanent employees as rules of CITD have no such provision.

Applicants filed a rejoinder in OA 1329/2014 stating the respondents organisation has to abide by the orders of the Govt. of India and therefore, letter dated 1.5.1987 has to be implemented. Governing council decisions of 1970 and 1971 are of no relevance in view of the GOI decision in May 87 scheme. Govt. of India has accepted the 4th CPC recommendations and therefore, instructions contained in 1.5.1987 letter, which has a genesis in the 4th CPC, has to be applied to the applicants since CITD has



implemented 4th, 5th and 6th CPC recommendations. GOI has not issued any separate instructions for autonomous institutions and therefore, it is mandatory for CITD to implement the pension scheme. In fact Ministry has collected details and the Governing Council decided and recommended to the Ministry, but the respondents did not follow it up. Orders in letter dated 1.5.1987 advised other Ministries/departments having CPF schemes to issue similar orders after consulting DOP&PW. The Internal Finance is only a part of the respondents organisation and has no authority to overrule the concurrence given by the MOF in formulating the direction in 1.5.1987 letter. Rule 43 provides for GOI to issue directions to the Governing Council, which have to be adhered to.

6. Heard the learned counsel and perused the pleadings on record.
7. I. It is not under dispute that the respondents organisation is an autonomous organisation registered under the Public Societies Registration Act and has been christened as Central Institute of Tool Design (CITD). Respondents institute is managed by the Governing Council and the bye-laws/ rules & regulations, of the Institute form the foundation to operate the Institute. The Additional Secretary & Development Commissioner, Micro, Small & Medium Enterprises, GOI is the Chairman of the Governing Council and the other members are drawn from other related Central/State Govt departments. The Governing Council is fully independent to take any decision in respect of the institute. However, the Central Government is empowered to give any directive to the Institute, which has to be adhered to.

II. In the background of the above style and substance of CITD, we proceed to examine the relief sought by the applicants, some of whom have retired and some others are in service as on the date of the filing of the OA, in regard to extending the pension scheme as envisaged in the letter dated 1.5.1987. The claim of the applicants, in essence, is that the CITD is a subordinate wing of the GOI and hence, has no alternative, but to implement the instructions contained in the letter dated 1.5.1987 of the Dept. of Pension and Pension Welfare (DOP & PW). Respondents, in response, affirm that CITD is independent and that the Governing Council has decided to apply its own CPF scheme. In this regard, a closer look at the bye laws of CITD would reveal that Rule 45 delegates the Governing Council with the authority to exercise all the powers of the Society and under Rule 46 (xi) (a) & (b), it has the following powers:

- a. *To lay down procedures for appointment of officers and staff under the Society; and terms and tenure of appointment, emoluments, allowances and rules of discipline and other conditions of service for the officers and staff of the society.*
- b. *Proposals relating to emoluments ie, adoption of pay scales, allowances and revision thereof and creation of post of Principal Director and higher posts need the approval of the Government of India in consultation with the Ministry of Finance, Department of expenditure.*

The Governing Council exercising the power vested in it, in its 5th meeting held on 30.7.1971, the Council approved the CITD CPF scheme duly vetted by the Internal Finance, Ministry of Industrial Development and it was implemented w.e.f. 1.4.1971. It is important that at the relevant point of time the CPF Rules (India) 1962 were in vogue and yet the Governing Council choose to have its own CPF scheme.

III. However, after the representations were being received from the staff, the matter was placed before the Governing Council on 26.2.1988 wherein it was decided to recommend to GOI for implementing the pension scheme to the CITD employees. The Ministry of Industry has responded by its letter dated 24.10.1988 by intimating that the internal finance wing has negated the proposal by observing as under:



“ The instructions contained in the Dept of Pension and Pensioners’ Welfare O.M No. 4/1/87-PIC dated 1st May, 1987 are not applicable to the employees of autonomous bodies and hence pension scheme cannot be introduced in CITD, Hyderabad, under those orders”

Applicants contend that the internal finance wing is just one part of the Ministry and has no authority to decide the issue. They appear to have conveniently glossed over the rule 46 (xi) (b) as extracted above, wherein it is mandatory for the governing council to obtain the concurrence of Ministry of finance in respect of emoluments, allowances, pay scales and the revision thereof. Further, it is not out of place to state that the Internal Financial Division of each Ministry represents the MOF and therefore, the advice rendered has to be adhered to. In case if the advice has to be overruled, the MOF has to be taken into confidence, otherwise not. In the instant case, the Ministry chose to go by the advice of the Internal Finance Division, which, thus transforms the advice tendered into a decision of the Ministry. Moreover, the cardinal principle of the Business Allocation Rules of the Government of India framed under clause 3 of Article 77 of the Constitution that any decision which has financial repercussions, the nodal Ministry i.e. Ministry of Finance has to be consulted and its concurrence has to be obtained. The shift from CPF to Pension Scheme is a major financial decision with heavy financial stakes and hence, even the

Governing Council cannot take a decision on its own. Therefore, we find that the Governing Council has only recommended the proposal. It is interesting to note that, on one hand, the applicants claim that the CITD is bound by the instructions of the GOI being a subordinate body and on the other hand, without hesitation, they would state that the instructions communicated by GOI are invalid. Therefore, we do not find much cohesion in their arguments to the extent stated and it is a clear case of following the doctrine of dichotomy to suit ones requirements.

IV. More over, clause 6.1 of the letter dated 1.5.1987 reads as under:

6.1 These orders apply to all civilian Central Government Employees who are subscribing to the contributory Provident Fund under the Contributory Provident Fund Rules (India) 1962. In the case of other contributory provident funds, such as Special Railway Provident Fund or Indian Ordnance Factory Workers Provident Fund or Indian Naval Dockyard workers Provident Fund etc the necessary orders will be issued by the respective administrative authorities.

By telescoping the above clause to CITD, we find that it has introduced its own CPF scheme in 1971 and when it proposed the introduction of the pension scheme, it was turned down by the Ministry vide its letter dated 24.10.1988. Therefore, it cannot be said that CITD has not attempted to implement the pension scheme.

V. The clause 6.1 has referred to Civilian Government Employees and the question that has to be answered is as to whether the CITD employees are qualified to be referred to as Civilian Government employees. Applicants have not submitted any evidence to prove that they are Government employees. While dealing with a similar issue concerning NWDA, which is also an autonomous organization, the Hon'ble Supreme Court in T.M. Sampath V Secretary, Min. of Water Resources in CA 712-

713/2015 & batch on 20.1.2015, relied upon by the respondents, has observed as under:



Thus, by reason that the employees are governed by NWDA CPF Rules, 1982, the O.M. dated 01.05.1987 is not applicable to the appellant-employees. Further, as they have not established that they are Central Government employees, at par with their counterparts, their claim of parity with Central Government Employees is also defeated.

Hence, the contention of the applicants that they are to be deemed to have come under the pension scheme, in light of the above observations, is not tenable.

VI. We also observe that the rules and regulation of the CITD employees have not been framed under Article 309 of the Constitution exclusively for them and therefore, considering the applicants as Govt. Servants would not be in the realm of reason. CITD, being a autonomous body, is governed by its own set of bye laws/ rules and regulations. Governing Council can adopt or drop the rules adopted depending on the requirements of the organization and the environmental demands. We take support of the observations of the Hon'ble Supreme Court of India in Dharmendra Prasad v. Sunil Kumar on 6 December, 2019 in Civil Appeal No. 9247 of 2019 (Arising out of SLP (Civil) No. 23787 of 2018), as under, in making the above observations:

2. *The High Court vide impugned order has directed the Uttarakhand Pey Jal Nigam1, a creation of the Statute i.e. the Uttar Pradesh Water Works and Sewer Arrangement Act, 1975, to determine the seniority of the Junior Engineers strictly as per Regulation 23 of the 1 for short, 'Nigam' Uttar Pradesh Jal Nigam Subordinate Engineering Service Regulations, 19782. Regulation 23 contemplates that the seniority of a person appointed in any branch of service in any category of post shall be made as per the date of substantive appointment.*

XXX

19. *We do not find any merit in the argument raised by the State that the seniority has to be fixed as per Rule 5 of the Uttarakhand Government Servant Seniority Service Rules, 2002. Such Rules were not adopted to be applicable to the Nigam. The Rules were approved by the Board of the Nigam*

on 24th September, 2007 proposing that the provision shall be made in the proposed service regulations but the Rules were made applicable in the year 2011 only. Such is the finding recorded by the High Court which is not disputed by the appellants or by the writ petitioners. Such Rules have been framed under the proviso to Article 309 of the Constitution and they are not applicable to a creation under a Statute. These Rules are applicable to government servants in respect of whose recruitment and condition of service Rules may be or have been made by the Government under the proviso to Article 309 of the Constitution. Since the employees of the Nigam are not government servants nor are their service conditions governed by Rules framed under the proviso to Article 309 of the Constitution, therefore, such Rules unless adopted by the Nigam cannot be extended to the employees of the Nigam.



In the context of the Hon'ble Apex Court observation cited supra, the OM dated 1.5.1987 would not be applicable to the applicants and also the verdict of the Hon'ble High Court of Delhi in WP. No. 15695/2000 cited by the applicants would not be any assistance to them.

VII. Besides, applicants claimed that in similar other autonomous organisations like NIRD, NIMH, Counsel for Research in Homeopathy, Central Counsel for Research in Yoga and Naturopathy, National Institute of Rural Development etc the pension scheme was extended as confirmed by the information obtained through RTI from the respective institution. Hence not extending the benefit to the applicants would tantamount to discrimination. The bye laws as well as the rule & regulations of different institutions would be different and depending on organizational needs of each institution, decisions are taken by the competent body. One cannot compare institutions on a simplistic dimension of autonomy. Discrimination would arise when employees are similarly placed in the same institution and are governed by similar rules and not, when they are working for different institutions as observed by the Hon'ble Apex Court in T.M.Sampath supra, as under:

Even if it is presumed that NWDA is "State" under [Article 12](#) of the Constitution, the appellants have failed to prove that they are at par with their counterparts, with whom they claim parity. As held by this Court in [Union Territory, Chandigarh v. Krishan Bhandari](#), (1996) 11 SCC 348, the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under [Article 12](#). Thus, the employees of NWDA cannot be said to be 'Central Government Employees' as stated in the O.M. for its applicability.



VIII. Even though the Governing Council of CITD recommended the introduction of pension scheme though it had its own CPF scheme, the Ministry has not agreed to, since the letter dated 1.5.1987 has not mentioned anywhere that the scheme is applicable to autonomous bodies. The administrative Ministry decision is binding on CITD in view of Rule 46 (xi) b. Applicants have also contended vociferously that the decision of the Ministry is binding on CITD. Further, when the CITD has its own CPF scheme, it would be prudent on part of the Tribunal to adopt an approach of non interference in the decision of the CITD/its Ministry, to have its own scheme, as observed by the Hon'ble Apex Court in T.M Sampath, *supra*, as under:

In light of the facts and circumstances of this case and the submissions made by the learned counsel on both sides, it can be concluded that NWDA had framed its regulation the CPF Rules, 1982 and they were duly approved by the Governing Body of NWDA. As NWDA is an autonomous body under the Ministry of Water Resources, it has framed its own bye-laws governing the employees. It has been time and again reiterated that the Court must adopt an attitude of total non-interference or minimal interference in the matter of interpretation of Rules framed by autonomous institutions. [In Chairman & MD, Kerala SRTC vs. K.O. Varghese and Others](#), (2007) 8 SCC 231, this Court held:

"KSRTC is an autonomous corporation established under the [Road Transport Corporation Act](#), 1950. It can regulate the service of its employees by making appropriate regulations in that behalf. The High Court is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR to automatically give all enhancements in pension and other benefits given by the State Government to its employees."

Thus, as the appellants are governed by the CPF Rules 1982, the O.M. applicable to Central Government employees is not applicable to them.

IX. The applicants have heavily banked on the judgment of the Hon'ble Principal Bench decision in OA 2037 of 2008, which is in favour of the applicants. However, the Hon'ble Delhi High Court had gone into the question of applicability of OM dated 1.5.1987 to the employees of NWDA as well as the correctness on part of the Hon'ble Principal Bench of this Tribunal to rely on S.L.Verma's case and held that NWDA employees are not Civilian Central Govt. employees as NWDA is an autonomous body and its employees are governed by NWDA CPF Rules, 1982 and not by CPF (India) Rules 1962 and therefore, they are covered by clause 7.2 of the May 87 OM and not by the clauses 6.1/7.2 of the OM. It was further held that the rules of the Central Govt shall be applicable where the NWDA has not framed its rules as per by law 28 of NWDA but in case of CPF the NWDA has framed CPF rules of 1982. Thus the order of the Hon'ble Principal Bench in T.M.Sampath and ors v U.O.I was revised by the Hon'ble High Court of Delhi and upheld by the Hon'ble Supreme Court. Hence, the Hon'ble Principal Bench judgment cited would not come to the rescue of the applicants.

One another judgment relied upon by the applicants is Sri R.K.Gupta v NCDC in WP 11371 /2006, wherein the petitioner was an employee of the Ministry of Coal and was eligible to be covered by the Pension scheme till he was deputed to NCDC and one another factor, which was in his favour was that he was not informed about the option to switch over. Thus, there are two elements in this judgment, the first and foremost is that the petitioner was from the Ministry to which the pension scheme rules apply



when he was working the Ministry. The second aspect was that he was not informed of the scheme by those concerned. The applicants do not come under the ambit of both these factors and hence, even this judgment would not apply to the case of the applicants.



X. Further, applicants claimed that Pension and Pensionary benefits are governed by the statutory rules under Article 309 of the Constitution and Pension is a property under Article 300-A. Applicants are covered by CPF scheme of CITD introduced in 1971 and there is no change in the same as per the respondents version, which was not refuted by the applicants in this regard. Applicants have not been sanctioned any pension under the relevant rules and therefore, the contentions made in respect of pension do not apply to the applicants covered by CPF.

XI. Another argument made by the applicants is that the Governing Council has resolved to implement mutatis mutandis the rules of the Central Government on 24.4.1970. However, the said resolution also states that the adoption of Central Govt. rules will hold good till the CITD frames its own rules. In regard to CPF, CITD has come up with its own scheme in 1971 and therefore, there is no violation of the resolution referred to.

XII. In addition, applicants contended that Rule 43 provides for GOI to issue directions to the Governing Council which have to be followed. We agree with the applicants and the direction from GOI vide letters dated 24.10.1988, was that the pension scheme is not applicable to CITD. The Ministry reaffirmed its decision on 20.6.1989 vide letter of the DD (TRTC), O/o. DC, SSI, Ministry of Industry New Delhi, when CITD

sought clarification as to whether there was any move to implement the pension scheme, the reply was that there was no such move and the decision of IF wing was already communicated. In addition, representations received were examined and rejected by the competent authority on 15.9.2014 by clarifying that the Governing council decision to cover the CITD employees with CPF from 1.4.1971, holds good. Hence, it is not fair to state that the respondents did not apply their mind, as is evident from the way they processed the proposal and replied.

XIII. It was also reiterated that information was collected from CITD by the Ministry and therefore, it is incumbent on part of the Ministry to take a positive decision. Collecting information from the lower formations is to evaluate the proposal and it would not mean that a favourable decision has to be necessarily taken. Collection is just one step of the managerial decision making process and there are many other factors that do influence the outcome, like the concurrence of the Internal Finance wing, affordability and so on. Finally, we do also note that the pension scheme has not been extended to any other Tool room employee under the Ministry.

XIV. Therefore, in view of the above circumstances, viewed from any angle, be it from the point of view of rules or law, the OAs lacks merit and hence, are dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER
evr

(ASHISH KALIA)
JUDICIAL MEMBER