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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 1168/2004

New Delhi this the 2nd day of November, 2004

Hon'ble Shri S.K. Naik, Member (A)

Mrs. Vinod Malhotra,
W/o Shri N.K. Malhotra,
R/o House No. 861, Sector 37,
Faridabad.

.... Applicant.

(By Advocate Shri B.B. Raval)

Versus

1. Union of India through
the Secretary,
Ministry of Human Resource Development,
Department of Education,
Government of India,
Shastri Bhawan,
New Delhi-110011.

2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016. Respondents.

(By Advocate Shri S. Rajappa)

O R D E R (ORAL)

Applicant, Smt. Vinod Malhotra, an employee of the Kendriya Vidyalaya Sangathan, is before this Tribunal challenging the order dated 4.2.2004 vide which it has been conveyed to her by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Delhi Region, that her application dated 26.1.2004 for becoming a member of General Provident Fund (GPF) Scheme on conversion from Contributory Provident Fund (CPF) Scheme cannot be agreed to.

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2. The brief facts of the case are that the applicant joined the services of the respondents during July, 1976 as a Primary Teacher. At the time of her joining, the Scheme of CPF was in vogue in the Kendriya Vidyalaya Sangathan. Sometimes during November, 1985, the Kendriya Vidyalaya Sangathan issued an Office Memorandum to give its employees an opportunity of exercising option to switch over from CPF to GPF-cum-Pension Scheme. The option was to be exercised by the Sangathan employees, who were in service on 31.3.1985 and the same had to be done within a period of six months from the date of issue of the Memorandum. Vide another Office Memorandum issued by the Kendriya Vidyalaya Sangathan on 01.09.1988, another opportunity was given to the employees for conversion from the CPF Scheme to the GPF-cum-Pension Scheme. In the said Memorandum, it had been indicated that all CPF beneficiaries, who were in service on 01.01.1986 would be deemed to have come over ^{to} _{to} the pension Scheme unless they opted to continue under the CPF Scheme. It had also been indicated in the said Memorandum that such option would have to be exercised and conveyed to the concerned Head of Office by 31.01.1989.

3. The applicant in this O.A. in response to the said circular had vide an undertaking dated 22.09.1988 exercised ~~his~~ option to continue under the CPF Scheme. The same undertaking is at Annexure R-1 filed by the respondents, in which it has been categorically stated that the option exercised for continuance of the CPF Scheme is final and irrevocable. However, the applicant in the O.A. claims that she came to know from her friends of the option being given by the employees to switch over from CPF to GPF Scheme only sometimes during January, 2004 and immediately submitted a representation giving her option for becoming a member of GPF Scheme. The request/representation of the applicant has been rejected by the respondents relying on the undertaking dated 22.09.1988 given by her.

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4. The counsel for the applicant has assailed the action of the respondents primarily on the ground that the respondents never circulated the Scheme for conversion from CPF to GPF Scheme to the applicant nor did they obtain her signature in token of her being apprised of such a Scheme. The undertaking dated 22.09.1988, the counsel contends, was obtained by the respondents in a routine manner. He submits that the undertaking is a stereotype proforma and the applicant might have signed it in a routine manner. He further contends that the applicant was under mental depression and that also might have contributed to her signing the undertaking in a routine manner. The counsel submits that the applicant is willing to refund the entire amount of contribution made by the employer and she be permitted to convert her option to GPF-cum-Pension Scheme. He has further contended that the denial to convert from CPF to GPF Scheme will amount to hostile discrimination against the applicant inasmuch as similarly situated Kendriya Vidyalaya Teachers, who were employed prior to 1986 had been allowed such options. Besides, the respondents are not going to lose anything or suffer any civil consequences if the applicant is permitted conversion from CPF to GPF Scheme, the counsel contends. He has, therefore, strenuously argued that the application be allowed.

5. The respondents have contested the case. Earlier they had filed a short reply and they were directed to file the detailed reply to the O.A. However, they have filed an affidavit raising some Preliminary Objections with regard to the maintainability of the O.A. The counsel for the respondents has relied upon the annexures enclosed to the affidavit filed by the respondents and has gone on to argue the case on that basis. He has submitted that the applicant having given her undertaking to opt for the CPF as opposed to the GPF as long back as on 22.09.1988 has suddenly made a request in January, 2004 that she could now change her earlier option to continue from CPF to GPF. On account of this delay by itself, the counsel contends, the O.A. is liable to be dismissed. Further, he contends that the

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undertaking to opt for continuance of the CPF Scheme was an affirmative action on the part of the applicant as she was already under the Scheme of the CPF and the teachers ~~of~~ all over the Kendriya Vidyalaya Sangathan had been asked to categorically state as to whether they would like to continue in the CPF, failing which they will be presumed to be coming over to the GPF Scheme. Had the applicant not opted to continue under the CPF Scheme, she would have automatically come over to the GPF Scheme. The counsel has further drawn my attention to Annexure R-2, which is a letter of the KVS dated 07.07.1989 vide which fresh account numbers in respect of CPF subscribers were circulated and the applicant therein was clearly stated that she was being assigned revised account No. 1878 after the exercise of the option to continue therein. The applicant herself has acknowledged this Account No. by appending her signatures against it. The counsel, therefore, contends that not only did the applicant consciously opt for the CPF in her undertaking dated 22.09.1988 but had reaffirmed her resolve to continue, as is evident from her acceptance of the revised Account No. on the letter dated 07.07.1989 almost even a year after the date of exercising the initial option. Since the circular categorically states that the option once exercised will be final and irrevocable which also finds mention in the undertaking, the counsel contends that the filing of representation is only an after thought. On the plea of medically unfit or under mental depression, the counsel contends that as per her own averment in the O.A., she has been suffering from some ailments for the last seven years but there is no mention that she was either mentally unfit to exercise such option during the year 1988 when the undertaking had been given. Thus, the plea of being under mental depression is only a fabrication.

6. With regard to the contention raised by the learned counsel for the applicant that the respondents could not be the final arbiter on the matter like this, the counsel has referred to the judgement of this Tribunal in OA 485/2004, decided on

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24.09.2004 and the judgement of the Calcutta High Court in WPCT No. 862/2003, decided on 27.04.2004. While in the O.A. decided by the Tribunal under similar circumstances, when the applicant therein had also exercised her option, and the same had not been contradicted, the request for change over from CPF to GPF has been rejected by this Tribunal. Similarly, in the Writ Petition No. 862/2003 before the Calcutta High Court, the question of whether there could be any finality as far as opting for the benefit of CPF or GPF-cum-Pension Scheme is concerned, was dealt with and the Hon'ble High Court had the following to say in this regard:

“Appearing for the respondent, Shri Madhusudan Ghosh, who was the applicant before the learned Tribunal, Mr. P.K. Munshi, contended that there could be no finality as far as opting for benefit under the CPF or the GPF-cum-Pension rules is concerned, till the very last date when an employee is to reach the age of superannuation. According to Mr. Munshi, the offer given to the employees of the Kendriya Vidyalaya Sangathan to change over from the CPF to GPF-cum-Pension Scheme was in violation of the said right and by exercising his option under the said instructions, the respondent had not surrendered his right to opt for changing over from the CPF to GPF-cum-Pension Scheme at any date prior to his superannuation.

We are unable to accept the submissions advanced on behalf of the respondent, since the same would, in our view, lead to administrative chaos when an opportunity not once, but twice was given to the employees of the Kendriya Vidyalaya Sangathan to exercise option either to remain under the CPF Scheme or to switch over to the GPF-cum-Pension Scheme and the respondent opted by way of written declaration to remain under the CPF Scheme, the writ petitioner and its authorities cannot be faulted for rejecting the subsequent prayer made by the respondent to switch over from the CPF Scheme to the GPF-cum-Pension Scheme”.

The learned counsel, therefore, contends that viewed from any angle, the O.A. has absolutely no merit and deserves to be dismissed.

7. I have considered the contentions raised by the learned counsel for the parties as also have perused the records of the case. Learned counsel for the applicant has made a fervent plea that the undertaking dated 22.09.1988 given by the applicant cannot be treated as ~~a~~ ^{not} sacrosanct, especially keeping in view the circular relied upon by the respondents had not been shown to the applicant. Her signature

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was obtained in a stereotype proforma in a routine manner and further that she is willing to refund the contribution received from the employer in case she is allowed to switch over the CPF Scheme.

8. I am afraid the matter has to be adjudicated upon on the legality of the action taken by the respondents and not on the ground of compassion. I find from the judgement of this Tribunal as well as Calcutta High Court (supra), referred to by the learned counsel for the respondents that the facts of the present case are fully peripheria to the facts in the judgements cited above. I have, therefore, no option to hold that since the applicant has not denied that she had duly exercised her option to continue under the CPF Scheme as far back as in September, 1988, the respondents cannot be faulted for rejecting her representation to switch over to the GPF Scheme. The plea of discrimination advanced by the learned counsel for the applicant has been denied by the learned counsel for the respondents and despite my repeated query to the learned counsel for the applicant, he has not been able to cite any instance/names of individuals whose requests for a change from CPF to GPF may have been considered by the respondents favourably. Under the circumstances, the plea of discrimination also goes.

9. In the result, as there is no merit in the case, the O.A. fails and is dismissed with no order as to costs.

S.K. Naik
(S.K. Naik)
Member (A)

'SRD'