



**Central Administrative Tribunal  
Principal Bench, New Delhi**

**O.A. No. 2605/2018**

**Reserved on: 19.07.2021  
Pronounced on: 18.08.2021**

(Through Video Conferencing)

**Hon'ble Mr. Mohd. Jamshed, Member (A)**

Bijay Kumar Jha,  
Principal,  
S/o Krishna Nand Jha,  
Aged 59 years,  
R/o Biru Complex Prince Chowk,  
District Simdega, Jharkhand.

...Applicant

(By Advocate: Mr. Abhishek Singh)

**Versus**

1. The Commissioner, Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi – 110016.
2. The Deputy Commissioner, Kendriya Vidyalaya  
Sangathan,  
Regional Office, Ranchi K.V. Campus Namakum,  
Ranchi – 834010, Jharkhand

...Respondents

(By Advocate: Mr. S Rajappa, Sr. Advocate assisted by Mr. R. Gowrishankar)



## ORDER

### **Mohd. Jamshed, Member (A):**

The applicant has filed the present OA challenging the action of the respondents denying him the benefit of Pension cum General Provident Fund (GPF) and treating him under Contributory Provident Fund (CPF) Scheme. The applicant was posted as Principal in the Kendriya Vidyalaya Sangathan (KVS), Ranchi Region, Jharkhand, when he filed the present OA. He joined KVS as Trained Graduate Teacher (TGT), (Maths) w.e.f. 03.10.1985 and has retired on 31.08.2018 on superannuation.

2. The applicant contends that on joining the service, he was given an option form, which he could not understand, being new in KVS and signed the same without giving any option for pension whether CPF or GPF. On the basis of the option form, he was allotted CPF vide CPF Account No. 3628 and the required contributory amount of CPF was regularly deducted towards his contribution. Subsequently, he wanted to change his option from CPF to GPF, for which he requested the respondents. A comprehensive representation dated 10.07.2017 was submitted by him,



through proper channel. However, no reply was received from the respondents to the said representation. He also served a legal notice dated 17.12.2018 in this connection, which has also remained un-replied.

3. The applicant claims that he joined KVS on 03.10.1985 and opted for CPF by signing the option form on 16.12.1985, without understanding the same. He was also given to understand that the same can be changed at any time from CPF to GPF. He contends that vide Office Memorandum dated 01.05.1987 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, it is clearly directed that those who did not exercise the option of remaining in CPF Scheme were deemed to have come over to GPF Scheme. He also contends that some of his colleagues, later on, were converted from CPF Scheme to GPF Scheme, whereas the applicant's representation was not considered. Aggrieved by this non-action of the respondents, the applicant has filed the present OA seeking directions to the respondents to pass an appropriate order giving him the



terminal benefit of Pension cum General Provident Fund. He has relied upon the Office Memorandum dated 01.05.1987 issued by Government of India, Judgment of Hon'ble High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 5976/2017 dated 04.01.2018 titled **M.S. Panwar vs. Central Administrative Tribunal & Ors.** connected with D.B. Civil Writ Petition No. 10662/2016 titled **S.P. Tak vs. The Central Administrative & Ors.** and also the Judgment of Hon'ble Delhi High Court in LPA No. 410/2014 dated 24.08.2016 titled **Smt. Shashi Kiran & ORS. Vs. Union of India & Ors.** Learned counsel for the applicant during the hearing relied upon various other judgments and submitted the same on record. These are as under:-

- (i) Judgment of Hon'ble Delhi High Court in WP(C) 1490/2006-1507/2006 and CM No. 5186/2006, 15911/2008, 12350/2010 and CM No. 2309/2011 decided on 30.04.2014 titled **R. N. Virmani and Ors. Vs. University of Delhi and Ors.**
- (ii) Judgment of Hon'ble Delhi High Court in LPA No. 410/2014 decided on 24.08.2016 titled **Smt. Shashi Kiran & Ors. Vs. Union of India & Ors.**
- (iii) Judgment of Hon'ble High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 5976/2017 decided on 04.01.2018 titled **M.S. Panwar**



**vs. Central Administrative Tribunal & Ors.** connected with D.B. Civil Writ Petition No. 10662/2016 dated 04.01.2018 titled **S.P. Tak vs. The Central Administrative & Ors.**

(iv) Judgment of Hon'ble High Court of Madras in W.P. No. 19215/2015, M.P. No. 1/2015 and W.M.P. No. 1197/2016 decided on 24.02.2017 titled as **N. Subramanian Vs. Commissioner, Kendriya Vidyalaya Sangathan and Ors.**

(v) Judgment of Jodhpur Bench of this Tribunal in OA No. 290/00411/2017 with Misc. Application No. 290/00308/2017 decided on 11.10.2018 titled **Smt. Kumudini Pandey Vs. Kendriya Vidyalaya Sangathan (KVS) & Ors.**

(vi) judgment of Hon'ble High Court of Judicature at Madras dated in W.P. No. 17165/2020 & WMP No. 21966/2020 decided on 07.12.2020 titled **The Commissioner & Ors. Vs. R. Amutha.**

(vii) judgment of Hon'ble Supreme Court of India in Civil Appeal No. 2723/2005 decided on 28.11.2006 titled **Union of India (UOI) and Ors. Vs. S.L. Verma and Ors.**

4. The respondents filed a counter reply opposing the OA. It is submitted that the applicant had opted for CPF which is on record. It is stated that the applicant was also well aware about the regular deduction of the CPF contribution being made, based on which he filed Income Tax Returns from time to time. It is also submitted that the matter regarding the grant of one time permission for change over from CPF to GPF was considered by the Ministry of Human Resource Development (MHRD) in



consultation with the Department of Expenditure. MHRD vide its letter dated 07.04.2015 informed that the Department of Expenditure after examining the proposal has observed that the employees of KVS who were in service as on 01.01.1986 and decided to opt for CPF made a conscious decision knowing well that the option exercised is final and grant of one more option to such CPF Subscribers in KVS could have repercussion elsewhere with such an option having to be extended to all other CPF beneficiaries, as well, whose number is quite substantial and in view of this position, the proposal for grant of one time permission of changing from CPF to GPF cum Pension Scheme for teaching and non-teaching staff of KVS is not agreed to. It is also submitted by the respondents that the judgments relied upon by the applicant concern the applicants therein and are with different facts and that the case of the applicant does not have any merit in view of his having signed the option form. The respondents have also relied upon the following judgments in support of their argument:-

- (i) judgments of this Tribunal in OA No. 973/2018 decided on 08.08.2019 titled **Ram Prit Thakur Vs.**



**Kendriya Vidyalaya Sangathan & Ors.** and OA No. 942/2016 decided on 16.10.2018 titled **Smt. Shashi Gupta Vs. Union of India & Ors.**

(ii) judgment of Hon'ble High Court in W.P. (C) No. 7712/2020 & CM No. 25450/2020 decided on 12.03.2021 titled **Kendriya Vidyalaya Sangathan Vs. Manju Sahgel** connected with W.P. (C) No. 9851/2020 & CM No. 31432/2020 dated 12.03.2021 titled **Kendriya Vidyalaya Sangathan Vs. Ramesh Chandra Agarwal.**

(iii) judgment of Hon'ble Supreme Court in Appeal (Civil) No. 2876/2007 decided on 06.06.2007 titled as **K.V.S. and Ors. Vs. Jaspal Kaur and Ors.**

5. Heard Mr. Abhishek Singh, learned counsel for the applicant and Mr. S. Rajappa, Senior Advocate, assisted by Mr. R. Gowrishankar, learned counsel for the respondents, through video conferencing.

6. The applicant joined the services of KVS as TGT (Maths) on 03.10.1985. Subsequently, he was promoted to the post of Principal. It is stated that on 16.12.1985, he had submitted the signed option form for joining the



CPF Scheme. Accordingly, in view of this option given by him, which he has not denied, he continued to remain under CPF. His contention that he has signed the option form without understanding the 'seriousness' being new to KVS cannot be taken as an excuse as he was a Teacher and supposed to well understand the rules and regulations. He has also placed on record his representation dated 10.07.2017 to the respondents requesting for change from CPF to GPF. The applicant had served a legal notice dated 17.02.2018, through advocate to the respondents taking the same plea that he was new to KVS and, therefore, did not understand the seriousness of the option form and opted for CPF. His representation and the legal notice was obviously not considered and the applicant retired from service on 31.08.2018 under CPF Scheme.

7. The Office Memorandum dated 01.05.1987 was once again quoted by the applicant in support of his claim, where it is indicated that if no option is received by the Head of the Office by the above date the employees will be deemed to have come over to the GPF, is a clause



that would obviously concern those who have not given any option for remaining in CPF. Reliance has also been placed by the applicant on the judgments mentioned above. The office memorandum dated 01.05.1987 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare provides as under:-

“3.All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.”

It is evident in the above OM that the deemed provision is entirely related in those cases where no option has been received by the Head of the Office.

8. This aspect of ‘deemed to have come over to Pension Scheme’ has been dealt with at length by the Hon’ble Supreme Court in Appeal (Civil) No. 2876/2007 decided on 06.06.2007 titled as **K.V.S. and Ors. Vs. Jaspal Kaur and Ors.** In the said judgment the



applicants therein claimed that they did not give any option for CPF and that there is no direct evidence to show that the applicants had opted for this scheme subsequently. However, the evidence made available by the KVS in the said case was in terms of CPF Account Number and the contributory deductions being made from time to time, which clearly indicated that the applicants therein were aware that they were under the CPF. The Hon'ble Supreme Court, therefore, dismissed the plea of the applicants seeking benefit of GPF. Various other cases relied upon by the applicant in the present OA have different facts including those in which no options were submitted and representations were made at a much later stage and those in which, the applicants have claimed the benefit of GPF many years after retirement. The relevant paras of the judgment of the Hon'ble Supreme Court in **K.V.S. and Ors. Vs. Jaspal Kaur and Ors.** (supra), read as under:-

“4. Learned counsel for the appellants submitted that the reference has been made to various documents which *prima facie* show that the option has been exercised. On the contrary, the learned counsel for the respondents submitted that the original documents show exercise of option were not produced. Merely because some other pieces of evidence were produced, they were not sufficient to show that option had been exercised.



5. In this context it is to be noted that the Tribunal itself noted that in the Pass Book name of applicant appears at no. 1889 and the signatures of the Principal of KVS is indicated. It indicates her appointment in KVS from July 1978 to May 1992 in Delhi, from May 1992 to April 2002 Baddowal, from April 2003 to April 2004 at Halwara and thereafter again at KVS Baddowal. It shows her account no. 1889. A copy of the Income tax return having deductions from pay and allowance for depositing in the CPF confirm this fact. The secondary pieces of evidence which go to show that deductions were being made at regular basis from pay and allowance. This according to CAT was not sufficient to show that she had exercised her option.

6. It is to be noted that in the allotment of revised CPF number in the letter of KVS no. 16-2/CO/89-90/CPF/KVS/PF dated 6.3.389, name of respondent no.1 appears at serial no.8 and the revised CPG no. is shown as 1889 in place of the earlier CPG no. CEC 2685. This change has not been denied by respondent no. 1. Additionally, again in letter no. KVS no. 16-2/CO/89-90/CPF/KVS/PF dated 6.7.1989 the name of respondent no.1 appears at serial no. 8 and again existing CPF No. CEC 2685 has been indicated. This letter is significant because there is a note in the service book of the concerned employee in respect of allotted CPC A/C under intimation to them. KVS letter no. F-2/C.O/89-90/CPF/KVS/PF dated 15.7.89 with reference to the earlier letter of 6.7.89 intimated the employees about the change. Again in this letter the name of respondent no. 1 appears at serial no. 8. Most vital document in this controversy is respondent no.1's letter dated 15th March, 1997. In this she has categorically stated that she was contributing towards CPF and her account no. is JRC 1889. This was addressed to the Accounts Officer. This document clearly establishes that respondent no.1 was aware of the change in account number and she herself referred to account number. Her feigned ignorance about the change is absolutely hollow because she herself knows about the changed number.

7. The last pay certificate issued to the respondent no.1 when she handed over charge on 23.5.1992 clearly indicate that CPF subscriptions of Rs. 130/- was being deducted and that she had opted for the pay of CPF Scheme and rate of subscription is Rs. 130/- for month and allotment of CPF account number 1889 was being transferred. On the face of these documents the CAT and the High Court should not have held that option was not exercised by the respondent no. 1. Pursuant to this Court's order the original service book of respondent no.1 was produced. Even on 10.6.2005 in the last pay certificate it has been stated that she had opted for the CPF Scheme. Similar is the position in the last



pay certificate dated 19.4.2003 and the last pay certificate of 18.1.1982. All these documents establish that respondent no. 1 had exercised the option for the CPF Scheme. Merely because the original documents relating to exercise to option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. The CAT and the High Court were not justified in talking a difference view.”

9. The case of the applicant is a little different from these cases as the applicant had given his option for CPF. This has not been denied by him. His contention is that being new to KVS, he did not understand the seriousness of this option and, therefore, at a subsequent stage, he requested the respondents for a change from CPF to GPF. His option form is on record and the representation made by him is of the year 2017 i.e. only one year prior to his retirement. The claim of the applicant that all along he was unaware of the deductions being made cannot be accepted. His submission that he did not understand the seriousness is an argument which is in no way tenable. This OA has been filed by him on 29.05.2018, just prior to his retirement only indicates that these actions have been taken by him as an afterthought after more than 30 years. The latest judgment of the Hon'ble Delhi High Court in W.P. (C) No. 7712/2020 & CM No. 25450/2020 decided on 12.03.2021 titled **Kendriya Vidyalaya**



**Sangathan Vs. Manju Sahgel** connected with W.P. (C)

No. 9851/2020 & CM No. 31432/2020 dated 12.03.2021

titld **Kendriya Vidyalaya Sangathan Vs. Ramesh**

**Chandra Agarwal** has considered catena of earlier judgments. In this judgment the orders of this Tribunal in OA No. 2742/2018 and OA No. 1398/2019 have been set aside. The relevant paras of the said judgment, read as under:-

“10. Petitioner KVS has placed on record documents evidencing regular deduction towards CPF with management contribution, such as annual statements issued to the respondents in each year; Form-16 issued to the respondents from time to time duly mentioning the CPF deduction made. All these documents clearly indicate that the respondents were well aware that they were part of the CPF scheme and not GPF cum pension scheme. Similar documents were relied upon by the Hon'ble Supreme Court in the decision in **Jaspal Kaur case** (supra) to come to the conclusion that in light of these documents, it was not possible to contend that the employees had not opted to remain under the CPF scheme.

11. As regards the contention of the respondents, that upon their selection as PGT/Principal their service began as new entrant and therefore they would be entitled to be part of the GPF cum pension scheme, the same cannot be accepted as the respondents had joined the employment of the petitioner KVS as teachers well before the cut-off date and the said employment continued without any break of service. Further, if the said contention of the respondents is to be accepted then the Respondents would not have fulfilled the minimum length of service required for receiving pension. Therefore, this contention of the Respondents is self-destructive. It may also be relevant to mention here that the respondents superannuated from service and accepted their retirement dues under the CPF without any protest or demur. It is almost after 10 years that they made a representation for the first time for converting them from CPF to GPF cum pension scheme. The said request not



having been considered favourably, the respondents chose to file OAs before the CAT.

12. As regards the reliance placed by the counsel for the respondents on the judgment of this Court in **V.D. Pandey case** (supra), the same would not be applicable to the facts of the present case as in the said case the representation was made by the employees before their retirement, whereas in the present case the representation was made long after their retirement. Similarly, in the judgment of this Court **Dr. V.D. Arya case** (supra) the employees had made a representation to KVS prior to their retirement and therefore, the said judgment will have no application in the present case. Similarly, in **Hoshiar Singh case** (supra), the employees had approached the CAT before their retirement.

13. The present case is squarely covered by the judgment of the Hon'ble Supreme Court in **Jaspal Kaur case** (supra), which was in the context of KVS teachers like the Respondents herein. In the said case also, KVS could not produce the original option form exercised by the employee. However, placing reliance on secondary documents, that clearly establish that the employee was aware that deductions towards CPF subscriptions were being made, the Hon'ble Supreme Court held that such secondary documents clearly establish that the employees had exercised option under CPF scheme and accordingly, set aside the judgment of the CAT and the High Court. Reliance may also be placed on the judgment of the Division Bench of this Hon'ble Court in **Delhi Transport Corporation Vs. Madhu Bhushan Anand** and other connected petitions, 172 (2010) DLT 668 wherein the Court was seized of the similar issue in the context of employees of DTC who wanted to shift from CPF scheme to the GPF cum pension scheme. In the said case also, the employees made representations for shifting from CPF to GPF cum pension scheme much after they had taken voluntary retirement (VRS) and upon being unsuccessful approached the CAT. Distinguishing the judgment of the Hon'ble Supreme Court in **Tarsem Singh case** (supra), the Division Bench held that the case of the employees would be barred under the law of limitation as they had received their full dues as per the CPF scheme upon their retirement and if they had any grievance they could have filed legal proceedings within three years of having received their dues. Accordingly, claim of the employees was rejected on the ground of limitation as well as delay and laches. The dicta of the said judgement is squarely applicable in the present case.

14. Accordingly, the present writ petitions are allowed and the impugned orders of the CAT are set aside."



10. It is once again worth mentioning that the above mentioned judgment of the Hon'ble High court has rejected the claims made by the applicants therein, who opted for a change from CPF to GPF at a much later stage. There is a clear difference between no option and specific option having been given. Hon'ble Apex Court in ***K.V.S. and Ors. Vs. Jaspal Kaur and Ors.*** (supra) had rejected the claim of the applicants therein despite the fact that they had not submitted any option form for remaining in CPF. The rejection by the Hon'ble Apex Court was primarily on the grounds of secondary evidence clearly establishing that those applicants were part of the CPF all along. The ratio of the judgment in ***K.V.S. and Ors. Vs. Jaspal Kaur and Ors.*** (supra) and that of Hon'ble Delhi High Court in ***Kendriya Vidyalaya Sangathan Vs. Manju Sahgel*** connected with ***Kendriya Vidyalaya Sangathan Vs. Ramesh Chandra Agarwal*** (supra) rejecting the claim for a change from CPF to GPF at a later stage put such challenges to rest.

11. The case of the applicant is not for seeking a change from CPF to GPF after a lapse of three decades, near his retirement, but more importantly is the one



wherein he is seeking such a change after having given specific option for remaining in CPF. There is, therefore, no justification for the applicant to challenge the same after regular deductions of his contribution and knowing fully well that he is in CPF Scheme to convert to GPF, nearing his retirement. The applicant has since retired from service. In view of the aforesaid and abovementioned judgments of the Hon'ble Supreme Court and the Hon'ble Delhi High Court, the case of the applicant is devoid of any merit.

12. Accordingly, the OA is dismissed. There shall be no order as to costs.

**(Mohd. Jamshed)  
Member (A)**

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