

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

O.A. No.1096/2020



**Reserved on: 27.08.2021
Pronounced on: 08.10.2021**

(Through Video Conferencing)

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

Smt. Indu Wahi, Retired TGT, KVS,
Age 66 years, (Senior Citizen),
W/o Shri Om Prakash Wahi,
R/o 22, Kailash Hills, East of Kailash,
New Delhi – 6110065.
(Mobile : 9811234106)

...Applicant

(By Advocate : Mr. Suresh Sharma)

Versus

1. Union of India through,
The Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi – 110001.
2. The Secretary,
Department of Pension and Pensioners' Welfare,
Lok Nayak Bhawan, New Delhi.
3. Kendriya Vidyalaya Sangathan,
Through the Commissioner,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.
4. The Joint Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.



...Respondents

(By Advocate : Mr. S. K. Tripathi for Mr. Raj Pal Singh)

ORDER

Mohd. Jamshed, Member (A):-

The applicant was appointed as Trained Graduate Teacher (TGT) (Sanskrit) in Kendriya Vidyalaya Sangathan (KVS) on 27.8.1983 and superannuated on 30.11.2014. Prior to her retirement, the applicant made a representation on 07.10.2014 requesting the respondents to grant her retiral benefits under GPF Scheme and not under CPF Scheme. The same was been denied by the respondents and her retiral dues have been paid under CPF Scheme. The applicant being aggrieved by the action on the part of the respondents seeks a direction to the respondents to treat her under GPF Scheme, recalculate and pay all the pensionary benefits as per GPF Scheme with 12 % interest till the payment of differential amount in a time bound manner.

2. It is submitted that Government of India issued an order of implementation of the recommendation of the 4th pay Commission by which all the CPF beneficiaries in service as on 01.01.1986 are deemed to have come over to the GPF Scheme on that date, unless they specifically opt out to continue under the CPF Scheme. The applicant



contends that she had not given any option for continuing under the CPF Scheme and, therefore, in terms of OM dated 01.05.1987 which was subsequently adopted by the KVS as *mutatis mutandis* in 1988, she should have been considered under GPF Scheme. She made a representation in that regard on 07.10.2014 before her retirement. The respondents, however, took no action on the same and on the retirement of the applicant paid all the pensionary benefits to her under the CPF Scheme without considering the fact that she never exercised any option to continue under the CPF Scheme. Applicant superannuated on 30.11.2014. She subsequently filed an OA No. 3255/2018 seeking conversion from CPF Scheme to GPF Scheme relying upon various judgements wherein similarly placed employees of KVS were given the relief in terms of shifting from CPF Scheme to GPF Scheme. The Tribunal vide its order dated 30.08.2018 directed the respondents to pass a speaking order on her representation. The respondents, however, did not take any action on the directions given by the Tribunal and hence the applicant has filed the present OA.

3. It is contended that the relief was granted to the similarly placed KVS staff by the Hon'ble Madras High Court in W.P. No. 19215/2015 dated 24.10.2017 and that



the respondents filed SLP No. 10965/2018. It is submitted that the SLPs filed by the respondents against this order have been dismissed by the Hon'ble Supreme Court. The applicant has also relied upon various judgments of this Tribunal, Hon'ble High Court and the Hon'ble Supreme Court including the following judgements in support of her claim:-

- (i) Judgment of Hon'ble Supreme Court in **State of U.P. & Others Vs. Arvind Kumar Srivastava & Ors.** (2015) 1 SCC 347.
- (ii) Judgment of this Tribunal in C.P. No. 354/2019 in O.A. No. 1999/2014 dated 10.02.2021.
- (iii) Judgement of this Tribunal in R.A. No. 11/2021 in O.A. No. 972/2017 dated 13.07.2021.
- (iv) Order of this Tribunal in M.A. No. 1872/2021 dated 30.07.2021 in OA-972/2017.

4. The primary contention of the applicant is seeking relief for being treated under GPF Scheme instead of CPF Scheme is based on her claim that she never gave any option to remain in CPF Scheme and in terms of extant rules she is deemed to have been considered under GPF Scheme. It is also claimed that she made a representation for this change before her retirement and that her case is covered by various orders/judgments quoted above.



5. The respondents filed a counter affidavit opposing the OA. It is submitted that the Government of India accepted and implemented the recommendation of the 4th pay Commission by deeming all the CPF beneficiaries in service as on 01.01.1986 to have come over to the Pension Scheme on that date unless they had opted out to continue under the CPF Scheme or had given their option to remain under the CPF Scheme. It is also submitted that the OM dated 01.05.1987 in this regard was not applicable to employees of Statutory/autonomous bodies like the KVS, unless the same is adopted by them. It is further submitted that the KVS in its 51st meeting of Board of Governors held on 31.05.1998 decided that the KVS will implement *mutatis mutandis* the decision taken by the Government of India on the recommendations of the 4th Pay Commission for change over from CPF Pension Scheme to GPF. It is also submitted that all the employees who joined the service on or after 01.01.1986 were to be governed by GPF Pension Scheme and those who were already in CPF Scheme and had given their options for the same were continued to be governed under CPF Scheme. It is submitted that the applicant joined the KVS as TGT (Sanskrit) on 27.08.1983 and opted for CPF Scheme on 24.10.1983. She was allotted CPF Account No. 2553. It is also submitted that as she had



submitted her option for continuing under CPF Scheme, she was continued under the same till her retirement. It is submitted that the option to remain in CPF was signed by her in the service record. It is also on record that she was subsequently allotted a revised CPF Account No. 1556. A copy of the service record and the entry made regarding her option has been produced in the counter affidavit as Annexure R-2. Reliance has been placed by the respondents on the judgment of the Hon'ble Apex Court in ***KVS and others Vs. Jaspal Kaur and Others***, CA No. 2876/2007 dated 06.06.2007 wherein it is held that secondary evidence in terms of office documents etc. indicating that CPF deductions were being made continuously should be sufficient to consider the person under the CPF Scheme. Various documents including the monthly pay bill, LPC, Ledger of the applicant have also been annexed by the respondents in their counter affidavit. Final payment of CPF granted to the applicant on her superannuation vide letter dated 16.01.2015 is also annexed indicating the amount paid by the applicant towards her own contribution and the total amount paid to her under the CPF. The respondents have also relied upon orders passed by this Tribunal and the Hon'ble High Court of Delhi for similarly placed persons wherein the change over from CPF Scheme to GPF Scheme has not been



permitted including the order passed by this Tribunal in OA-942/2016 and the judgment of Hon'ble Delhi High Court in Writ Petitions (C)7712/2020 and 9851/2020 delivered on 12.03.2021.

6. Heard Mr. Suresh Sharma, learned counsel for the applicant and Mr. S.K. Tripathi for Mr. Raj Pal Singh, learned proxy counsel for the respondents, through video conferencing.

7. The applicant joined KVS as TGT (Sanskrit) on 27.08.1983 and retired on superannuation on 30.11.2014. She was treated under CPF all along and the required deductions were also made towards her contribution to the CPF Scheme. She made a representation on 07.10.2014 just prior to her retirement advising the respondents that as she had not opted for the CPF Scheme, she should be deemed to have come over to the pension scheme as she was in service before 01.01.1986. It was requested in her representation that she should be paid all the pensionary benefits on the basis of GPF Scheme and not under CPF. She retired from service on 30.11.2014 and all her retirement dues were paid to her under CPF Scheme. Earlier, she filed OA No. 3255/2018 seeking similar relief. Vide order dated 30.08.2018, this Tribunal directed the respondents to pass a speaking order on the representation



and the legal notice served on behalf of the applicant. No action was said to have been taken on the representation of the applicant and hence she filed the present O.A. seeking the same relief. The applicant has all along denied that she had submitted any option for remaining under CPF Scheme at any point of time. She claims that in terms of OM dated 01.01.1986 issued by the Department of Pension and Pensioners' Welfare, she should be deemed to have shifted to GPF Scheme. Per contra, it is stated by the respondents that the applicant joined her service on 27.08.1983 and had indeed given her option for joining CPF Scheme on 24.10.1983. The same is recorded and signed by her in the service record annexed as R-2 of the counter affidavit submitted by the respondents. She was also allotted the original CPF Account No. 2553, which was subsequently revised to CPF Account No.1556. This too indicates that the applicant was well aware of her being under CPF Scheme. Needless to mention that the deductions being made towards her contribution under the CPF Scheme were also in her knowledge all through her service. She continued under CPF Scheme till her retirement on 30.11.2014 and has been paid the due CPF amount as part of her retiral benefits.



8. The applicant in her rejoinder submitted that the respondents have claimed that the applicant had signed the option form, but they are not having the original and therefore, their claim that applicant had exercised the option cannot be accepted. In the counter affidavit filed by the respondents, copy of the service record clearly indicated the option given by the applicant and allotment of CPF No. 2553. All these particulars have been recorded in the service book, which in itself is a primary evidence. It is also evident from other documents like pay details, CPF statement and ledger etc. that the applicant has been under the CPF Scheme all through her service and made her first representation only prior to her retirement.

9. Various judgments relied upon by both the applicant and respondents have dealt with the cases of similarly placed staff but with varying facts. In a number of cases, the relief has been granted based on the ratio of the judgment of Hon'ble Apex Court in **Jaspal Kaur's case** (supra). This Tribunal has also dealt with many similar cases with different facts and, therefore, the relief granted is also specific to the individuals and the facts of their case. The ratio of the judgment of Hon'ble Apex Court in **Jaspal Kaur's case** (supra) continues to hold the fundamental premise on which a number of cases have been decided. In



that case, the applicant had submitted that she had not given any option for remaining under the CPF Scheme. The respondents could also not produce any document relating to the same. However, they relied upon a number of other documents, which indicated that she had been treated all along under the CPF Scheme and was well aware of the same. The Hon'ble Supreme Court held that the secondary evidence is equally important and if the applicant had not objected to remaining in the CPF Scheme for many decades and only at a time nearer to her retirement she chose to come over from CPF Scheme to GPF Scheme, only on the basis that she has not given any option for change over from CPF to GPF Scheme, the same cannot be considered. It is also held that merely because the respondents could not produce the original documents does not become a ground for change over from CPF to GPF at a much later stage. The relevant portion of the judgment of the Hon'ble Apex Court in **Jaspal Kaur's case** (supra), reads as under:-

“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 6.3389, 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.

8. The appeal is allowed but in the circumstances without any order as to costs.”

10. Recently in two other judgments of this Tribunal in OA No. 1398/2019 and OA No. 2742/2018 against which the Writ Petition was filed, the Hon'ble High Court of Delhi has once again considered various judgments including the



judgment of Hon'ble Apex Court in **Jaspal Kaur's case** (supra), Judgment of Ernakulam Bench of this Tribunal in OA No. 457/2011 **Joshnson P. John Vs. Assistant Commissioneretc.** and set aside the relief granted by the Tribunal in those OAs primarily on the ground that the relief sought by those applicants was much after their retirement. In RA No. 11/2021 in OA No. 972/2017 dated 13.07.2021, the Coordinate Bench of this Tribunal in case of **Saroj Sharma Vs. Union of India &Ors.** also considered the above mentioned judgments including the one in **Jaspal Kaur's case** (supra). The relevant paras of the judgment in RA No. 11/2021 in OA-972/2017 decided on 13.07.2021 and also relied upon by the applicant, read as under:-

“14. Identical issue arose before us in OA.1999/2014. By referring to the scheme in detail, a Division Bench of this Tribunal allowed the OA. The order passed therein was upheld by the Hon'ble High Court of Delhi and Hon'ble Supreme court.

15. The respondents want this Tribunal to take the various documents mentioned in the RA as secondary evidence. We may point out that it is only when the respondents do not have the original of the option form exercised by the applicant and that they have a copy thereof, that it can be treated as the secondary evidence. They seem to have taken the circumstantial evidence, as secondary evidence. The parameter for appreciation of those two are substantially different.

16. Notwithstanding the slight confusion as to this, the fact remains that the only way the respondents could have ousted the applicant, of the benefit of the GPF was by proving the satisfaction of the Tribunal that there existed the option exercised by the applicant for CPF. The burden is heavy in view of the fact that the scheme provided for the coverage under GPF in the event of failure to exercise the option. Such consequences provided for under law cannot be avoided, just by placing reliance upon certain routine documents, that too authored by the respondents themselves.



17. Reliance is placed upon by the respondents themselves on the judgement of the Hon'ble High Court of Delhi in Kendriya Vidyalaya Sangathan vs. Manju Sehgal in W.P.(C) 7712/2020. That was a case in which the employee laid a claim long after the retirement. In the instant case, the plea was raised while the applicant was in service and the rejection also came much before her retirement.”

11. Other judgments relied upon by the applicant have been considered. Primarily, the applicant has relied upon the judgment of Hon'ble High Court of Judicature at Madras in WP-25334/2015 decided on 24.10.2017. The facts of that case are different in so far as the petitioner therein made various representations to the competent authority for conversion of his option to CPF Scheme during service but no action was taken by respondents and the applicant superannuated. It was also held that no document could be produced by the respondents in support of their contention that there existed an option exercised by the petitioner to remain in CPF Scheme. In the absence of any such document, it was held that the Court cannot conclude that the applicant had exercised his option to remain in CPF Scheme. As regards the case on hand, it is not unequivocally demonstrated by the management of the KVS that indeed an option was exercised by the applicant in favour of the CPF Scheme. The facts of the case under consideration are different significantly as the applicant in the present OA has indeed given option for CPF as available in the service record and signed by her.



12. In the order passed in RA-11/2021 in OA-972/2017 passed by this Tribunal, it is clearly stated in para-16 that if the respondents want to oust the applicant from GPF, it is only by way of satisfying the Tribunal that there existed an option. The present OA is different from those cases as an option is available on record in the counter affidavit filed by the respondents. On the basis of this option submitted by the applicant for CPF Scheme, a CPF No. was allotted to her initially applicant, which was later on revised. It is thus evident that the applicant was all along aware that she was under the CPF Scheme. The applicant herein made a representation for the first time, one month prior to her retirement after almost three decades to treat her under GPF Scheme. Similar issue was dealt with in OA-942/2016 decided on 16.10.2018 by this Tribunal and the claim of the applicant was found to be devoid of merit. Another identical issue was dealt with by this Tribunal in OA-2605/2018 decided on 18.08.2021. The relevant paras of this judgment are as under:-

“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 O.A. is dismissed. No costs. “



13. In view of the aforesaid facts and circumstances, it is evident that the applicant had given option for remaining under CPF way back in 1983 and has since remained under the CPF Scheme. She cannot claim the relief granted to the applicants in various other relied upon judgments as in those cases the respondents could not produce any primary evidence of an option having been given by the applicants therein.

In view of the above, the claim of the applicant herein is not tenable. There is no infirmity and illegality on part of the respondents in treating her under CPF. According, the OA being devoid of merit is dismissed. There shall be no order as to costs.

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

vinita/ ankit/