

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00331/2015

Reserved on: 12.07.2016

Jodhpur, this the 21<sup>st</sup> day of July, 2016

**CORAM**

**Hon'ble Dr. Murtaza Ali, Judicial Member**

**Hon'ble Ms. Praveen Mahajan, Administrative Member**

S.P.Tak s/o Shri S.N.Tak, aged about 58 years, resident of Bagar Chowk, Tak Sadan, Jodhpur, presently working as Physical Education Teacher (PET) at Kendriya Vidyalaya, Banar, Jodhpur

.....Applicant

By Advocate: Mr. Govind Suthar

Versus

1. The Commissioner, Kendriya Vidyalaya Sangthan, 18, Shaheed Jeet Singh Marg, New Delhi.
2. The Deputy Commissioner, Kendriya Vidyalaya Sangthan, 92, Gandhi Nagar, Bajaj Nagar, Jaipur-1.

.....Respondents

By Advocate : Mr. Avinash Achariya

**ORDER**

**Per Hon'ble Ms. Praveen Mahahan, Member (A)**

The challenge in this OA is the communication dated 28.7.2015, by which, representation filed by the applicant for conversion from CPF to GPF-cum-Pension Scheme has been turned down by the Finance Officer of the Kendriya Vidyalaya

2. Brief facts of the case are as follows:-

The applicant was initially appointed in KVS as Physical Education Teacher w.e.f. 1<sup>st</sup> March, 1985. KVS is an autonomous body, running schools all over the country. The Government of India vide Memo dated 01.05.1987 had notified that all the CPF beneficiaries shall switch over to GPF-cum-Pension Scheme, unless they specifically opt for CPF scheme. The KVS issued a Memorandum on the recommendations of the 4<sup>th</sup> Central Pay Commission to give benefit of pension to the teaching and non-teaching staff working with KVS. Vide OM dated 01.09.1988 (Ann.A/3) an option was given to the KVS employees to switch over to GPF scheme from CPF scheme. This benefit of pension was made applicable to all the incumbents working in the KVS who were in service as on 1.1.1986. It was clarified in the Memorandum dated 01.09.1988 that the incumbents who give their option to continue with the CPF will be allowed to continue under CPF scheme while those, who do not submit the option, would automatically be deemed to have switched over to the GPF-cum-Pension Scheme.

The applicant avers, that he was an appointee prior to 1986. The option was to be given only if he was to continue under CPF. He did not exercise the said option, but as per Memo dated 01.09.1988, he should automatically have been treated as

deducting the instalments from his salary towards CPF, he realised that he was still being continued under the CPF scheme and, thereby, was being deprived of the pensionary benefits under the GPF. He then made a representation to the Assistant Commissioner, KVS, Jaipur on 26<sup>th</sup> July, 2006 (**Ann.A/4**) through proper channel. Vide communication dated 11.09.2006 the Principal, KVS, KV No.2, Jodhpur, replied to the Principal, KV STPS, Suratgarh, that the applicant had not submitted any option regarding his retention or change from CPF to GPF (**Ann.A/6**). Similar representation was again moved by the applicant on 28.02.2012 (**Ann.A/7**) and 08.07.2015 (**Ann.A/9**). However, vide communication dated 28.07.2015, the request of the applicant was turned down.

The applicant submits that it is clear from para 3.2 of the Memorandum dated 01.09.1988, that it was incumbent upon the respondents to consider his case for conferment of pensionary benefits subsequent to his retirement. The rejection of his representation regarding switching over to GPF-cum-Pension Scheme, is not legally tenable. He has, therefore, prayed that :-

- (a) By an appropriate order or direction, the impugned communication dated 28.7.2015 (**Ann.A/1**) may kindly be declared illegal and be quashed and set aside.
- (b) By an appropriate order or direction, respondents be directed to treat the applicant as being switched over

appropriate adjustments and grant him pension after his retirement in 2017 with all consequential benefits by applying the order dated 1<sup>st</sup> September, 1988 in the case of the applicant.

- (c) By an appropriate order or direction, the respondents be directed to switch over the applicant from CPF Scheme to GPF Scheme/Pension Scheme and grant him the benefits of pension subsequent to his retirement in 2017.
- (d) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

3. Relying on the same OM, issued by the KVS dated 01.09.1988, the respondents submit that, undoubtedly, an option was given to the employees of KVS, who were in service prior to 1.1.1986 to switch over from CPF to GPF-cum-Pension Scheme. The applicant was well aware of the fact that he is continuing under the CPF scheme. This is apparent from the secondary record of the applicant, such as his pay bill, annual statement of CPF issued and Form-16 issued for filing Income Tax returns etc. These documents have been produced collectively at **Ann.R/4** by the respondent-department.

To nullify the contention of the applicant that he was not aware of his continuance under CPF, the respondents show that the applicant filed his nomination form on 19.09.1991 nominating his wife as a beneficiary for the accumulation towards his CPF

cited Ministry of Human Resource Development circular No. F-19-20/205 IFD dated 22.02.2006 (**Ann.R/3**) in support of the stand taken by them, qua the applicant. Vide this circular, the Ministry of Human Resource Development, issued instructions, not to permit any employee to switch over from CPF to GPF-cum-Pension Scheme. **Para (ii)** of the circular states that **"The employees who entered into service on or before 31.12.2003 and were governed by the CPF Scheme, are not eligible for switch over to the GPF-cum-Pension Scheme. They will continue to be governed by the CPF Scheme."**

The respondents state that though the request to grant one time option for change over from CPF to GPF-cum-Pension was considered by the Ministry of Human Resource Development, but it was turned down in consultation with Department of Expenditure vide their letter No.F.3-14/2012-UT-2 dated 07.04.2015. **It was decided that the employees who continued under CPF Scheme made a conscious decision knowing well that the option exercised is final. Tempering with this option would have serious financial repercussions elsewhere with such an option having to be extended to all other CPF beneficiaries. Hence, the proposal for grant of one time permission for changing from CPF to GPF cum Pension Scheme for KVS staff was not agreed to**

The respondents have also relied up on the judgment of the Hon'ble Supreme Court in Civil appeal No.2876/2007, Kendriya Vidyalaya Sangathan vs. Smt. Jaspal Kaur dated 6.6.2007.

4. Heard both sides at length. We have gone through various OMs and circulars of Government of India along with the relevant material placed on record.

5. We find that there is sufficient circumstantial evidence to show that the applicant consciously chose to continue under the CPF Scheme.

6. Over the years, the applicant made regular deductions towards contribution to CPF with management contribution through pay bills. Annual statement of CPF was issued to the applicant each year and the applicant has also been issued Form-16 duly mentioning the CPF deductions. In this regard, Ann.R/4 is relevant, which shows Form-16 for the period 2008-09 – assessment year 2009-10 and Form-16 for the period 2014-15 – assessment year 2015-16 clearly illustrating that the employee was aware of his being treated under the CPF scheme. Prior to this, the applicant filed his nomination form in 1991, nominating his wife as a beneficiary for the accumulations in CPF account. Again, a sufficient enough evidence, to show his preference to continue under CPF Scheme.

7. It was only in the year 2006 that the applicant represented to the authorities (Ann.A/4) stating that – he did not submit his option to change CPF into GPF in 1988 because he was not informed by the then Principal K.V. No.2 AFS Jodhpur (Raj.) in this regard.

We are in total agreement with the observations made by the Assistant Commission of KVS that-

“It is surprising that the teacher is representing after a gap of 17-18 years whereas he is receiving CPF annual Statement every year.”

8. In this regard, we may also refer to the judgment of the Hon'ble Apex Court in the case of Rajasthan Rajya Vidyut Vitran Nigam Ltd. vs. Dwarka Prasad Koolwal & Ors. [AIR 2014 SC 3655] wherein the Hon'ble Apex Court observed as under:-

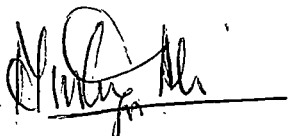
“61. In this regard, the definition of ‘option’ occurring in Regulation 2(O) of the Employees General Provident Fund Regulations, 1988 is important. An ‘option’ requires a written consent of the existing employee to either continue with the CPF Scheme or to opt for the GPF Scheme within a period of 90 days from the commencement of the GPF Regulations. The period of 90 days commences with the GPF Regulations coming into force with effect from 28<sup>th</sup> November, 1988. The definition also provides that an employee who does not exercise the option within the period of 90 days shall be deemed to have exercised his option in favour of the existing CPF Scheme. It is also provided that it will be “the personal responsibility of the concerned employee/officer to ensure that his option reaches timely in the office of the COA (P&F), RSEB, Jaipur.” In other words, not only is a time limit statutorily prescribed by the GPF Regulations for exercising the option, but a responsibility has been cast on the employee to ensure that his option reaches the concerned authorities within the time prescribed.

67. When the Pension Regulations and the GPF Regulations are read together, the necessary conclusion is that an employee must give his option for either continuing to be a member of the CPF Scheme or to switch-over to the Pension and GPF Regulations. This option has to be exercised within a period of 90 days from the cut-off date, that is, 28<sup>th</sup> November, 1988...."

9. The entire sequence of events discussed in the foregoing Paras belie the various pleas taken by the applicant, which obviously appear to be an after thought and demonstrate that the applicant knowingly preferred to continue under CPF Scheme. The two circulars of Ministry of Human Resource Development dated 22.2.2006 and clarification dated 7.4.2015 would also debar his change over from CPF to GPF-cum-Pension Scheme at this belated stage. The judgment of the Hon'ble Apex Court (cited supra) clearly stipulates that no employee can vacillate from one scheme to another. In view of this, the applicant is not entitled to any relief.

10. Accordingly, OA is dismissed being devoid of merit with no order as to costs.

  
(PRAVEEN MAHAJAN)  
Administrative Member

  
(DR. MURTAZA ALI)  
Judicial Member

R/