

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 454/2001

Dated this the 18th November, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Dr.M.S.N.Balasubramanyan
S/o M.S.Nagaswamy
Retired Scientist (F)
Vikram Sarabhai Space Centre, Thumba
Residing at TC-4/169, Ambala Nagar Extension
Kowdiar P.O.
Thiruvananthapuram. Applicant.

(By advocate Mr.T.C.Govinda Swamy)

Versus

1. Union of India represented by
The Secretary to the Government of India
Department of Space
Anthariksh Bhavan, New BEL Road
Bangalore - 94.
2. The Secretary to the Government of India
Department of Pension and Pensioners' Welfare
(Ministry of Personnel, Public Grievances & Pension)
New Delhi.
3. The Director
Vikram Sarabhai Space Centre
Trivandrum.
4. The Director
Department of Space
Anthariksh Bhavan, New BEL Road
Bangalore.
5. The Deputy Secretary to Government of India
Department of Space
Anthariksh Bhavan, New BEL Road
Bangalore. Respondents.

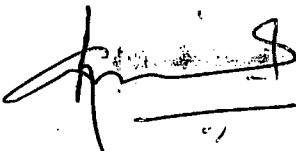
(By advocate Mr.C.N.Radhakrishnan)

The application having been heard on 12th September, 2002,
the Tribunal delivered the following on 18th November, 2002:

ORDER

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

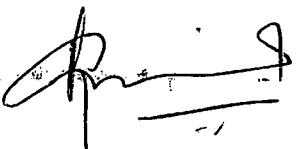
Applicant, aggrieved by A-1 letter dated 23.5.2000, A-2
memo dated 23.1.2001 and A-3 memo dated 30.9.97 by which the
request of the applicant for allowing him to exercise his option



to switch over from CPF to GPF/Pension Scheme had not been agreed to, filed this "Original Application," seeking the following reliefs:

- (a) Call for the records leading to the issue of Annexure A-1, A-2 & A-3 and quash the same.
- (b) Declare that the applicant is entitled to exercise his option to switch over to GPF/Pension Scheme from the date of his retirement in terms of A-9 and direct the respondents to accept the option of the applicant accordingly.
- (c) Direct the respondents to grant the applicant, the monthly pension and other retiral benefits, as per declaration in para 8(b) above, forthwith with 18% interest on the arrears thereof.
- (d) Award costs of and incidental to the application.
- (e) Pass such other orders or directions, as may be deemed just, fit and necessary in the facts and circumstances of the case.

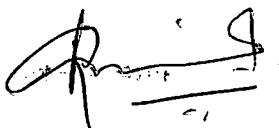
2. According to the applicant's averments in the OA, the General Provident Fund Scheme was introduced in the Indian Space Research Station on 1.4.1975 and the existing employees were given option either to retain the Contributory Provident Fund Scheme (CPF) or to opt to General Provident Fund (GPF)/Pension Scheme. Large number of employees who had opted for CPF represented for extending the opportunity again for opting to GPF/Pension Scheme. Government of India had given opportunity to its employees to switch over to GPF/Pension Scheme on various occasions. Many of the employees opted for it and many did not. The applicant was given the last opportunity before retirement to opt within six months from the date of issue. This was on the basis of a certain order of the Department of Pension & Pensioners' Welfare and also Department of Space. A-4 is office memo No. 4/1/87/P&Per (PIC-II) dated 12.10.92 issued by the Department of Pensions & Pensioners' Welfare and A-5 & A-6 are



copies of O.M.No.2/19(2)/87-I(Vol.IV) dated 4.1.93 and O.M.No.VSSC/EST/G/58 dated 20.1.93 issued from the offices of respondents 1 & 3 respectively. Applicant submitted an option to switch over "the GPF/Pension Scheme" on 19.5.93. The Department took the stand that the "applicant's" option was received late. Applicant represented the matter before the Department and he was served with A-7 reply dated 27.4.94 stating that since he had not submitted the option in time, his option dated 19.5.93 was out of time and the same could not be accepted. Meanwhile the order of premature retirement with effect from 3.5.93 served on the applicant was challenged before this Tribunal and the same was dismissed. A-7 was taken up before this Tribunal in O.A.No.919/95 and the said application was rejected by this Tribunal. Applicant filed O.P.No.19031/97 before the Hon'ble High Court of Kerala. During the pendency of the O.P., the applicant came to know of an order of the Government of India, Department of Pensions & Pensioners' Welfare dated 23rd July, 1996 permitting fresh option to come over to the GPF/Pension Scheme, to those who had retired after 1.8.92. Immediately, the applicant submitted an option but that was rejected by A-1 letter dated 23.5.2000. Later, when the matter came up for hearing before the Hon'ble High Court, a preliminary objection was raised by the respondents that the petition was not maintainable in view of the decision of the Supreme Court in L.Chandra Kumar Vs. Union of India AIR 1997 SC 1123. In the said circumstances, the Hon'ble High Court, without expressing any opinion on the merits of the case or on the maintainability of the writ petition, disposed of the writ petition, making it clear that if the petitioner was making a suitable representation before the concerned authority claiming the benefit of Ext.P-21 therein, it



was for the said authority to consider the same and pass appropriate orders in accordance with law. Exhibit P-21 referred to therein was O.M.No.4/1/87-P&PW(PIC-II) dated 23.7.96 of the Department of "Pension" and "Pensioners" Welfare (A-9 herein). Relying on A-9, "applicant" submitted that since he was in service on 1.8.92 and retired from service on 3.5.93 and was deemed to have opted to the CPF Scheme, he was eligible to exercise a fresh option in terms of para 3 of A-9. Accordingly, the applicant forwarded a fresh option (A-10) dated 29.11.2000. In reply, the applicant was served with A-2 rejecting his request for option to switch over from the CPF to GPF/Pension Scheme. Along with A-2, even though copy of A-3 was said to have been attached, it was not done so. On representation, copy of A-3 was issued to the applicant along with a "covering" "letter" dated 12.3.2001. According to the applicant, the stand of the respondents that the opportunity of fresh option in terms of A-3 was not available to the applicant was totally opposed to the object and spirit of A-9. According to him, A-9 specifically provided for exercising a fresh option and "re-calculation" of "the pensionary/terminal benefits in the light of such fresh option." The said opportunity was extended to "the" "employees" who were "in" service as on 1.8.92 and had since retired from service. The applicant having been in service as on 1.8.92 and having "retired" on 3.5.93 was fully entitled and "eligible" to avail of the fresh option. Applicant, on account of the denial of option, was subjected to substantial prejudice, "irreparable" damages and recurring monthly losses and thus he filed this OA seeking the above reliefs. According to him, "A-1" & "A-2" were arbitrary, discriminatory, contrary to law and violative of the constitutional "guarantees enshrined under Articles 14 and 16, and without application of mind and not based



on relevant considerations. Further, according to the applicant, A-3 was without jurisdiction since 4th respondent did not have the authority to modify or deny the benefit referred to in the order issued by the "Department of Pension and Pensioners' Welfare. A-1 & A-2 had been issued not in accordance with law as directed by the Hon'ble High Court in O.P.No.19031/97.

3. Respondents filed reply statement resisting the claim of the applicant. Rejoinder, additional reply statement, additional rejoinder and second additional reply statement were exchanged between the parties.

4. Heard the learned counsel for the parties. Learned counsel for the applicant Sri T.C.Govinda Swamy, after taking us through the factual aspects as contained in the OA submitted that the Department of Space by A-5 office memo dated 4.1.93 implemented the Ministry of Personnel & Training's office memo dated 12.10.92 with minor modifications. By A-9 office memo dated 23.7.96, the Ministry of Personnel reviewed A-4 O.M. The Hon'ble High Court of Kerala by its A-8 judgement dated 4.10.2000 disposed of O.P.No.19031 of 1997 filed by the applicant, making it clear that if the petitioner made a representation before the concerned authority claiming the benefit of A-9 O.M. dated 23.7.96 the "said authority" would consider the same and pass appropriate orders in accordance with law. Department of Space pursuant to A-9 O.M. dated 23.7.96 issued A-12 O.M. dated 30.5.97 followed by A-3 O.M. dated 30.9.97 clarifying A-9. He submitted that A-3 resulted in arbitrary classification unrelated to the object sought to be achieved. According to him, A-3 made such a classification that those who were in service as on 1.8.92



and retired thereafter as a separate class and denied them the benefit of a "fresh" option on the ground that they had retired after 1.8.92 and "prior" to the date of issuance of A-12. According to him, the object of A-9 and A-12 was to provide for a fresh option to all those who were in service as on 1.8.92 and A-3 did "not" give such an opportunity.* Hence A-3 was arbitrary, discriminatory, contrary to law and violative of Articles 14 & 16 of the Constitution.* He submitted that when the respondents admitted that the applicant had not opted for the pension scheme, it should be "deemed" that the applicant had opted for the CPF Scheme as per A-4. * Hence as per para 13 of A-9, he would be eligible for "exercising" a "fresh option." Whatever amount the applicant had received by virtue of retiral benefits could not act as an estoppel or waival in the light of the clear provisions contained in para "3" of A-9.* According to him, A-9 order was issued reviewing A-4 and "maintaining" "status-quo ante" as prevailed prior to the "issue" of A-4.* However the rights and liabilities accrued to those who had acted in terms of A-4 was sought to be protected as per the directions given in para 2 & 3 of A-9 as also by A-12.* A-3 order dated 30.9.97 was under challenge before this Tribunal as the same was ultra vires A-9. A-3 was "totally" illegal and opposed to the constitutional guarantees. Respondents "had" themselves admitted in the reply statement that as and "when" "the" Government of India extended option, the same "was" extended to the S&T personnel also. Under such circumstances, when A-9 O.M. permitted exercise of a fresh option to those who retired between 1.8.92 and the date of A-9, the respondents "could" not take a "stand" different from their own



practice and procedure. He further submitted that the 4th respondent did not have any authority to deny the benefit as referred to in A-9 order issued by the Department of Pension & Pensioners' Welfare.

5. Learned counsel for the respondents Sri C.N.Radhakrishnan took us through the "reply statement and reiterated the points made therein. According to him, 'A-3' was issued in accordance with the relevant orders applicable to the Department of Space. A-3 O.M. dated 30.9.97 was not "ultra vires" A-9 O.M. dated 23.7.96. A-9 was "issued" to formulate a uniform policy in the matter of pensionary/terminal benefits for Scientific & Technical personnel working in the three Departments, viz. Department of Atomic Energy, Department of Electronics and Department of Space.

6. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

7. We find that in A-8 judgement in O.P.1903/97, Hon'ble High Court of Kerala held as under:

"It is evident from the above mentioned decision of the Supreme Court that High Court need entertain only those petitions filed against the orders of the Tribunals, which have been rendered after the decision of the Supreme Court. Evidently, the decision in the present case was rendered by the Tribunal prior to the said date. However, in the facts and circumstances of this case, we need not go into the question of maintainability, since we find that Government of India has subsequently issued another circular, Ext.P21 dated 23.7.96. Petitioner submitted that he is entitled to get the benefit of the said circular. Counsel for respondents 1 to 4 fairly submitted that if the petitioner is legally entitled to get the benefit of the said circular, he may approach the appropriate authority, in the event of which the said authority will consider the same in accordance with law. Counsel also submitted that Fundamental Rules give power of relaxation to the authorities.



In the said circumstances, without expressing any opinion on the "merits" of the case, or on the maintainability of the Writ Petition, we dispose of the Writ Petition. We make it clear that if the petitioner is making a suitable representation before the concerned authority claiming the benefit of Ex.P21, it is for the said authority to consider the same and pass appropriate orders in accordance with law.

"O.P." is disposed of as above"

8. It is pursuant to the above directions of the Hon'ble High Court that A-2 memo dated 23.1.02 was issued to the applicant by the 5th respondent in response to his representation dated 29.11.2000 addressed to the Secretary, Department of Space (first respondent herein) requesting for extending the benefit of switch over from CPF to GPF/Pension Scheme in terms of A-9 memo. On a perusal of A-2 memo, we find that the respondents had referred to, apart from O.M. dated 23.7.96, the Department of Space O.M. dated 30.9.97 also (A-3 herein) and have rejected the request of the applicant for allowing him to exercise option to switch over from CPF to GPF/Pension Scheme. Therefore, in our view, what is required to be examined is whether the action of the respondents in rejecting the request of the applicant is legal or not.

9. A-9 O.M. dated 23.7.96 reads as under:

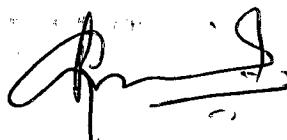
"No.4/1/87-P&PW(PTC-II)
GOVERNMENT OF INDIA
DEPARTMENT OF PENSION AND
PENSIONERS WELFARE

Lok Nayak Bhavan
Khan Market, New Delhi.
Dated 23rd July, 1996.

OFFICE MEMORANDUM

Sub: Change over of the Central Government employees from the Contributory Provident Fund Scheme to the Pension Scheme - Formulation of uniform policy for Scientific & Technical Personnel - regarding.

The undersigned is directed to refer to this Department's O.M. dated 12.10.92 on the subject mentioned above and to say that the Scheme of Pensionary/Terminal benefits for Scientific and Technical Personnel,



hereinafter referred to as S&T personnel, working in the Departments of Electronics, Department of Atomic Energy and Department of Space has been further reviewed by the Government in consultation with these Departments. As a result of this review, it has been decided to maintain the status quo ante, as prevailing prior to the issue of above mentioned orders, in respect of the pensionary/terminal benefits admissible to Scientific and Technical personnel in the 3 Departments who were in service as on 1.8.92. They will continue to be governed in the matter of their pensionary/terminal benefits by the orders issued by the respective departments from time to time."

In the case of S&T personnel in the 3 Departments who joined service on or after 1.8.92 it has been decided to follow the uniform policy as enumerated below:

- (i) All A&T personnel joining Department of Atomic Energy, Department of Space and Department of Electronics and such other scientific Departments as have adopted the system prevailing in the Department of Atomic Energy will initially be appointed on CPF Scheme.
- (ii) The S&T personnel will have one option to be exercised any time but not later than completion of 20 years qualifying service to switch over from CPF scheme as they may wish.
- (iii) Those who do not exercise any option within the specified period will be deemed to have opted for switch over to Pension Scheme
- (iv) The option once exercised will be final. Thus change over from Pension Scheme to CPF is not permitted.

The S&T personnel of these Departments who were in service as on 1.8.92 and had since retired from services after exercising an option in terms of para 3 of the OM dated 12.10.92 may exercise a fresh option in accordance with the orders applicable in the respective Departments or referred in para 1 above within a period of 6 months. The pensionary/terminal benefits may be recalculated in their case in the light of such fresh option.

The Department of Atomic Energy etc. are requested to bring these orders to the notice of all S&T personnel working under them.

Sd/-
(S.C.BATRA)
Deputy Secretary to the
Govt. of India"

10. Annexure A-4 is the Department of Pension & Pensioners Welfare O.M. dated 12.10.92 referred to in the above O.M. and the same reads as under:



10

"No.4/1/87-P&PW(PTC-II)
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, P.G.& PENSIONS
(DEPARTMENT OF PENSION & PW)

New Delhi the Dt. 12.10.92.

OFFICE MEMORANDUM

Sub: Change over of the Central Government employees from the Contributory Provident Fund Scheme to the Pension Scheme - Formulation of uniform policy for Scientific & Technical Personnel - regarding.

The undersigned is directed to refer to para 6.3 of this Department's OM of even number dated the 1st May, 1997 on the subject mentioned above and to say that the proposal to formulate a uniform scheme for Scientific & Technical personnel (hereinafter referred to as S&T personnel) has been under examination in consultation with the Department of Space, Department of Atomic Energy and Department of Electronics.

The following uniform policy will apply to S&T personnel in the Department of Space, Department of Atomic Energy and Department of Electronics.

- i) All S&T personnel joining Department of Atomic Energy, Department of Space and Department of Electronics and such other scientific Departments as have adopted the system prevailing in the Department of Atomic Energy will initially be appointed on CPF Scheme.
- ii) The S&T personnel will have one option to be exercised any time but not later than completion of 20 years qualifying service to switch over from CPF to Pension Scheme or to retain the CPF Scheme as they may wish.
- iii) Those who do not exercise any option within the period specified above will be deemed to have retained the CPF Scheme.
- iv) The option once exercised will be final. Those who have opted in favour of pension scheme will not be allowed to re-opt in favor of CPF Scheme.

The new Scheme mentioned above will apply to all S&T personnel who join the Departments of Atomic Energy, Space and Electronics as fresh entrants after 31st July, 1992. As far as those already in service on 1.8.92 are concerned their cases will be regulated in the following manner:

- i) Those who have completed 29 years qualifying service on 1st August, 1992 and are still on CPF Scheme, will exercise the option referred to in the preceding paragraph within six months of the issue of these orders. The option once exercised shall be final. Those who do not exercise any option will be deemed to have retained the CPF Scheme.



ii) The cases of those who have not completed 20 years qualifying service on 1st August, 1992 and are still under CPF Scheme on that date will be regulated as for fresh entrants in terms of provisions of paragraph 2 above provided that the case of those who will be completing 20 years qualifying service within six months of the issue of these orders, the option may be exercised within the said period of six months.

iii) Such of the S&T personnel as have already opted for pension Scheme under the instructions in force before issue of these "orders" shall continue to remain under the pension scheme. They will not have any further option to re-opt in favor of the CPF Scheme.

The Department of Atomic Energy Etc. are requested to bring these orders to the notice of all S&T personnel working under them.

Sd/-
Swarn Dass
Deputy Secretary to the Govt. of India"

11. What we find is that Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners Welfare had recalled the letter dated 12.10.92 by the A-9 O.M. dated 23.7.96. At the same time, in para 3 of the O.M., they have made certain provisions for those who were in service on the date of issue of O.M. dated 12.10.92 and who were not in service on 23.7.96. As the applicant was admittedly in service on 12.10.92 and was retired prematurely on 3.5.93, he would be governed by para 3 of the O.M. dated 23.7.96. We find that the applicant's claim for exercising option is on the basis of this paragraph. According to the respondents, as a matter of policy, the Department of Space had decided that those S&T personnel who retired after 1.8.92 would not be eligible for exercising options. They submitted that A-9 O.M. was implemented in the Department of Space through A-12 O.M. dated 30.5.97. They submitted that the service conditions and related orders/practices followed in the DOS and Department of Atomic Energy were not alike. The Scientific and Technical personnel in



the Atomic Energy were allowed to switch over to GPF/Pension Scheme at any time before the date of their retirement whereas in the Department of Space the practice followed was that all the S&T personnel initially appointed were admitted to CPF Scheme and at the time of confirmation, option was given for switching over to GPF/Pension Scheme. Further, as and when Government of India extended option, S&T personnel of DOS/ISRO were also extended the same to switch over from CPF to GPF/Pension Scheme. Therefore the Department of Space decided that the Scientific & Technical personnel were not eligible to opt for GPF/Pension Scheme after their retirement and this was reiterated through A-3 O.M. dated 30.9.97 and as the applicant had retired on 3.5.93 the request of the applicant was rejected through A-2 memo dated 23.1.2001.

12. On a perusal of A-4, we find that the same was issued to formulate a uniform scheme for Scientific & Technical personnel and the "uniform" policy was as stated therein. According to the said scheme, all those who were to be appointed on or after 1992 would be initially "admitted to CPF Scheme." They would have one option to be exercised at any time but not later than completion of 20 years qualifying service to switch over from CPF to Pension Scheme or to "retain the CPF Scheme as they may wish, and those who did not exercise any option within the period specified would be deemed to have "retained the CPF Scheme. It was also stipulated that those who "opted in" favor of pension scheme would not be allowed to re-opt in favor of CPF Scheme. As far as those in service on 1.8.92 and had completed 20 years qualifying service on 1st August, 1992 were to exercise option for the Pension Scheme within six months from the date of issue of that circular. It was also stipulated that those who did not exercise



any option would be deemed to have retained the CPF Scheme. We find from the above stipulations that all those who were in service on 1.8.92 were given a fresh option to come over to Pension Scheme. By A-9 O.M. the Department of Personnel, Public Grievances and Pension withdrew this O.M. dated 12.10.92 and decided to maintain the status quo ante as prevailing prior to the issue of O.M. dated 12.10.92. Further, in para 3 of the O.M. dated 23.7.96 the S&T personnel who were in service as on 1.8.92 and who had since then retired from service after exercising an option in terms of para 3 of the earlier O.M. were given an opportunity to exercise a fresh option. We also find that whereas in A-4 the provision was that those who did not exercise any option would be deemed to have retained CPF Scheme, in A-9 it is provided that those who did not exercise any option would be deemed to have opted for switch over to Pension Scheme. Para 3 of A-9 gave this option to all those who were in service on 1.8.92 and retired prior to 23.7.96.

13. The Department of Space issued A-12 O.M. dated 30.5.97 circulating the O.M. dated 23.7.96. The said OM is as under:

No.2/10(2)/87-I(Vol.V)
Government of India
Department of Space

Antariksh Bhavan
New B.E.L.Road
Bangalore-560 094
May 30, 1997.

OFFICE MEMORANDUM

Subject: Personnel - Scientific and Technical Personnel - Option to switch over from CPF to GPF/Pension Scheme - Formulation of uniform policy - Revised instructions reg.

The undersigned is directed to refer to DOS OM No.2/10(2)/87-I (Vol.IV) dated 4.1.93 under which a copy of 'DP&PW' OM No.4/1/87-P&PW(PIC-II) dated 12.10.92 regarding extension of one time option facility to S&T employees to switch over to GPF/Pension Scheme has been



forwarded. The DOS/ISRO Centres/Units were also requested to take necessary action to extend the option to the S&T staff keeping in view the provisions contained in DP&PW OM dated 12.10.92. The DP&PW has since issued the orders vide OM No.4/1/87-P&PW(PIC-II) dated 23.7.96 (copy enclosed) modifying the earlier orders issued in order to have a uniform policy in respect of grant of option to S&T personnel of DOE, DAE and DOS. The revised policy now issued by DP&PW has been carefully considered in the Department keeping in view the option facility already extended vide DOS OM dated 4.1.93. In supersession of all orders issued on this subject, the position with regard to the policy for exercising the option to switch over from CPF to GPF/Pension Scheme in respect of S&T personnel of the DOS/ISRO Centres/Units is as under:

2. S&T personnel who joined prior to 1.8.92 and completed 20 years of service as on 1.8.92 and still in service.
 - 2.1 Those who have joined prior to 1.8.92 and completed 20 years of qualifying service as on 1.8.92 and still in service with CPF Scheme may be granted one more final option to switch over to GPF/Pension Scheme.
 - 2.2 The option will have to be exercised by such employees and conveyed to the concerned authorities of Centres/Units on or before 30.10.97 in the form attached.
 - 2.3 The option should be exercised within the stipulated time and no request either for extension of time or condonation of delay should be entertained.
 - 2.4 If no option is received on or before 30.10.97, the employees will be continued to be governed by CPF terms.
 - 2.5 The option once exercised is final and change over from GPF/Pension Scheme to CPF Scheme will not be allowed later under any circumstances.
3. S&T personnel who have not completed 20 years of qualifying service as on 1.8.92 but completed 20 years of qualifying service on the date of issue of this OM:

Those who have completed 20 years of qualifying service on the date of issue of this OM and did not exercise the option on the assumption that they will be deemed to have opted for CPF in terms of para 3 (ii) and para 2 (iii) of DP&PW OM dated 12.10.92 may be informed in writing and their consent obtained for retention of CPF Scheme within 30.10.97, otherwise they will be brought under GPF/Pension Scheme automatically.
4. S&T personnel who were in service as on 1.8.92 but not completed 20 years so far and still in CPF:



4.1 Those who were in service as on 1.8.92 but not completed 20 years of service and did not exercise any option based on DOS OM dated 4.1.93 so far will have one final option to be exercised at any time but not later than completion of 20 years of qualifying service to switch over from CPF to GPF/Pension Scheme or to retain the CPF Scheme as they may wish.

4.2 Those who do not exercise the option within the stipulated period will be deemed to have opted for GPF/Pension Scheme.

4.3 Those who have exercised the option either for retaining CPF or to switch over to GPF/Pension Scheme will have no further option and their cases are to be regulated based on the option exercised by them.

4.4 The option once exercised will be final and change over from GPF/Pension Scheme to CPF Scheme or vice versa is not allowed under any circumstances.

5. S&T personnel who have joined service on or after 1.8.92

5.1 All such S&T personnel will be initially admitted to CPF Scheme.

5.2 The S&T personnel will have a final option to be exercised at any time but not later than completion of 20 years of qualifying service to switch over from CPF to GPF/Pension Scheme or retain the CPF Scheme as they may wish.

5.3 Those who do not exercise any option within 20 years of qualifying service will be deemed to have opted for GPF/Pension Scheme.

5.4 There will be no system of automatic grant of option for such S&T personnel at the time of confirmation as mentioned in para 2 (iii) of DOS OM dated 4.1.93; (they may however be informed of their option as per 5.2 above at this stage of their career).

5.5 The option once exercised (including non-exercise of option as per para 5.3 above) will be final and change over from GPF/Pension Scheme to CPF Scheme or vice versa is not be permitted under any circumstances.

5.6 For the employees who have specifically opted for CPF or for GPF/Pension Scheme before the date of issue of this OM, there will be no further option and their cases have to be regulated based on the option already exercised by them.

6. Government Contribution

In case of the employees option to switch over to GPF/Pension Scheme, the Govt's contribution to the CPF together with the interest thereon is to be received by the Govt. and credited back to the Govt. account.



7. General Information

All Centres/Units of DOS/ISRO are requested to bring the contents of this OM to the notice of all employees concerned including those who are on leave, deputation, training etc. in India and abroad and take necessary action. For this purpose, Centres/Units are requested to evolve a suitable system of obtaining acknowledgment in each individual case so that the employees should be well aware of the Rules position and exercise the correct option within the stipulated period.

8. These orders are not applicable to Admn. Staff.

9. Hindi version will follow.

Sd/-
(A. Sengupta)
Joint Secretary to Govt.
of India

14. Subsequently Department of Space issued A-3 OM dated 30.9.97 clarifying the contents of A-12 OM, which reads as under:

"No.2/10(2)/87-I(Vol.V)
Government of India
Department of Space

Antariksh Bhavan
New B.E.L.Road
Bangalore - 560 094
September 30, 1997.

OFFICE MEMORANDUM

Subject: Personnel - Scientific and Technical Personnel option to switch over from CPF to GPF Scheme - Formulation of uniform policy - revised instructions- clarification - reg.

In continuation of this dept.'s OM of even number dated 30.5.97 on the above mentioned subject the undersigned is directed to state that a doubt has been raised by some Centres/Units as to whether the option facility as envisaged under para 3 of the DP&PW OM No.4/1/87-P&PW(PIC-III) dated 23.7.96 can also be extended to those Sci/Engrs of this Dept. who were in service as on 1.8.92 but since retired from service. The matter has been examined and it is clarified that such S&T employees are not eligible for exercising option to switch over to GPF/Pension Scheme after retirement.

2. Similarly the revised instructions as laid down in the OM under reference is also not applicable to employees who on re-employment are allowed to subscribe to CPF and also to the employees appointed on contact basis where the contribution to CPF is regulated in accordance with the terms of contract.



3. All Centres/Units of DOS/ISRO are advised to regulate the cases as per the above clarifications.

4. Hindi version of the OM is enclosed.

Sd/-
(R.G.Nadadur)
Director"

15. We find that A-9 provided for a fresh option to those who were in service on 1.8.92 and who had since retired from service in accordance with the orders applicable in the respective departments or referred in para 1 above of the OM i.e. on the basis of OM dated 12.10.92. By A-3 OM dated 30.9.97 the Department of Space clarified the contents of A-12. But on considering A-3 we find that the facility of option which was available to all who were in service as on 1.8.92 was made available to only those who were in service on 30.5.97 - date of issue of A-12. We have no hesitation in holding that this would be clearly discriminatory. To illustrate, a S&T person who was in service on 1.8.92 and who had exercised an option to switch over to 'pension' scheme and subsequently retired, say, on 1.1.95 would have been governed by Pension Scheme whereas S&T personnel like the applicant who had decided not to exercise an option and was deemed to have opted for CPF Scheme and had retired will not get any option to switch over to the Pension Scheme on the basis of A-3 just because he had retired between 1.8.92 and 30.5.97. Similarly a person who had not exercised any option pursuant to O.M. dated 12.10.92 and had deemed to have opted the CPF Scheme till 30.5.97 can either opt to continue to be governed by CPF Scheme or can switch over to Pension Scheme. Admittedly the policy of the Department of Space was that all S&T personnel initially appointed were admitted to CPF Scheme and at the time of confirmation, an option was given to switch over to GPE /Pension Scheme and as and when Government of India extended



the option, S&T personnel of ISRO were also extended the option to switch over to GPF/Pension Scheme.⁴ When this is the admitted policy of the Department of Space, A-3 OM dated 30.9.97 makes a discrimination between those who had retired between 1.8.92 and 30.5.97 and those who had not retired so. This is a clear case of discrimination. Moreover, when the Department of Personnel which is the nodal department, had inspite of withdrawing the OM dated 12.10.92, allowed an option to those who had retired between 1.8.92 and 23.7.96. Department of Space does not have any authority to modify the scheme especially when as a policy, Department of Space had been extending such option facilities to the S&T personnel whenever Govt. of India extended the said option facilities.

16. Further it is evident from Department of Personnel A-9 O.M. that the objective was to bring in as many S&T Personnel as possible under the GPF/Pension Scheme. With that objective in view, they had even permitted retired persons to exercise a fresh option to come over to GPF/Pension Scheme. For all the above reasons, we are of the view that the clarification given by the Department by A-3 O.M. dated 30.9.97 cannot be sustained and the applicant is entitled to exercise an option to switch over to GPF/Pension Scheme as per A-9 OM dated 23.7.96.

17. A-2 memorandum had been issued pursuant to the directions of the Hon'ble High Court of Kerala in OP No.19031/97. We find that by A-2, the applicant's request for exercising option as per A-9 OM had been rejected. A-1 letter dated 23.5.2000 also



rejected the request of the applicant to exercise the option. In the light of our finding in the foregoing paragraphs, we are of the view that A-1 & A-2 cannot be sustained and is liable to be set aside and quashed.

18. In the result, this OA succeeds and is allowed with the following orders/directions:

- (i) We set aside and quash A-1, A-2 and A-3.
- (ii) We declare that the applicant is entitled to exercise his option to switch over to GPF/Pension Scheme in terms of A-9 OM and we direct the respondents to accept the option of the applicant accordingly.
- (iii) We direct the respondents to take further follow up action as per (i) & (ii) above and grant the consequential monetary benefits as due to the applicant at the earliest and in any case within a period of four months from the date of receipt of the copy of this order, and
- (iv) The parties shall bear their respective costs.

19. The Original Application stands allowed as above.

Dated 18th day of November, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER
aa.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Annexures referred to in this order:

A-1 True copy of the Department's letter No.VSSC/EST/PEN/20505/2914 dated 23.5.2000.

A-2 True copy of Memorandum No.1/4/36/99-1 dated 23rd January 2001 issued by the 5th respondent.

A-3 True copy of the Office Memorandum No.2/10(2)/87-I(Vol.V) dated 30.9.97.

A-4 True copy of the Government of India, Department of Pensions & Pensioners Welfare bearing No.4/1/87-P&PW(PTC-II) of 12.10.92.

A-5 True copy of the O.M.No.2/19(2)/87-I(Vol.IV) dated 4.1.93 issued from the office of the 1st Respondent.

A-6 True copy of the Memorandum No.,VSSC/EST/G/58 of 20.1.93 issued from the office of the 3rd respondent.

A-7 True copy of Vikram Sarabhai Space Centre's letter No.VSSC/EST/E-PEN/20505/20540 dated 27.4.94.

A-8 True copy of the judgement of the Hon'ble High Court in OP No.19031 of 1997.

A-9 True copy of the OM No.4/1/87-P&PW(PIC-II) dated 23.7.96 issued by Government of India, Department of Pension and Pensioners Welfare.

A-10 True copy of applicant's option dated 29.11.2000.

A-11 True copy of covering letter bearing No.1/4(36/99-V) of 12.3.2001.

A-12 True copy of the order No.2/10(2)/87-I(Vol.V) dated 30.5.97 of the Department of Space.

R-1(a) Copy of judgement in OA No.829/93.

R-1(b) Copy of judgement in OA No.919/95.