

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 519 / 2009Friday, this the 21st day of May, 2010.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Thambi John,
Retired Master Craftsman,
Vezhathumoozhil House,
Edakkattuvayal.P.O.
Arakkunnam(via), Ernakulam.

....Applicant

(By Advocate Mr PV Mohanan)

v.

1. Union of India represented by
Secretary,
Department of Pension & Pensioners Welfare,
New Delhi.
2. Chief Commodore NSRY,
Chief Staff Officer (Personnel & Administration,
for Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command, Kochi.
3. The Accounts Officer,
Office of the P.C.D.A.(Navy),
Fund Cell, Mumbai.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 21.5.2010, the Tribunal on the same day delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

This is the second round of litigation by the applicant before this Tribunal. His grievance is that he was not allowed to change over from Contributory Provident Fund (CPF for short) Scheme to General Provident Fund (GPF) Scheme/Pension Scheme.



2. The brief facts of the case are that the applicant was an ex-Air Force personnel retired on 31.7.1981. After his re-employment as a Weapon Fitter in the Naval Ship Repair Yard on 23.3.1984 under the second respondent, he rendered 23 years of service before his superannuation as a Master Craftsman on 28.2.2007. He was an optee under the CPF scheme. After the acceptance of the recommendation of the 4th Central Pay Commission, Government of India, Department of Pension & Pensioners Welfare, vide Annexure A-1 OM No.4/1/87.P.I dated 1.5.1987, gave option to all CPF beneficiaries to change over from CPF Scheme to Pension Scheme. According to the said O.M, all CPF beneficiaries in service as on 1.1.1986 were deemed to have come over to the Pension Scheme from that date unless they specifically opted out to continue under the CPF scheme,. Accordingly, the respondents required the employees under them to exercise their option on or before 30.9.1987, in the prescribed form. All the employees of the Southern Naval Command except the applicant, opted for the GPF scheme. After remaining as a CPF beneficiary for about 23 years, just a few months before his retirement on superannuation on 28.2.2007, he made a representation on 25.10.2006 to Chief of the Naval Staff, Naval HQ, to permit him to changeover from CPF to GPF Scheme. His contention was that the Annexure A-1 was not circulated in the Department in which he was working and he was never told about the option for the Pension Scheme. Further, he was the only person governed by the CPF scheme in the whole of the Department and the Head Quarters vide Annexure A-2 and A-3 letters dated 21.9.2004 and 8.2.2005 directed the Commanding Officer to furnish reasons for not converting him to GPF. While forwarding the said representation vide Annexure A-4 letter dated 25.10.2006, the 2nd respondent observed that the applicant was advised to opt for the GPF scheme when the option was open but he did not do so. He had in fact expressed his unwillingness for changeover from CPF to GPF scheme in 1994 and 1997. However, in view of the fact that

the applicant was going to retire on 28.2.2007, the Integrated Headquarters of MOD was requested to consider his request as a very special case. But vide Annexure A-6 letter dated 2.4.2007, the applicant was informed by the Commodore Superintendent, Naval Ship Repair Yard that the competent authority at Headquarters, Southern Naval Command, Kochi has clarified that as per the instructions contained in DOP & PW OM No.4/1/87-PIC-1 dated 1.5.1987, option once exercised by the CPF beneficiaries is final and there is no justification for approaching the Government for relaxation as the applicant has exercised option on his own on 30.3.1987 to continue under the CPF scheme. They have also submitted that inspite of the aforesaid instructions, the applicant refused to change over to GPF scheme inspite of several opportunities granted to him even later.

3. During the first round of his litigation, this Tribunal in O.A.616/2007 observed that the applicant was the only person in his Department who has not change over to the GPF/Pension Scheme and it was only at the fag end of his service, he had made the representation on 3.10.2006 to the Chief Of Naval Staff to permit to him to changeover to GPF/Pension Scheme. However, since the concerned authorities from the Headquarters of the Naval Command, Kochi where he was working was not even prepared to forward his representation to the Chief of the Naval Staff to permit him to switch over to the CPF Scheme holding that there was no justification for approaching the Government for relaxation in his case this Tribunal held that the applicant could not have been denied his right for consideration of his representation even at the belated stage and allowed him to make a fresh representation to the Chief of the Naval Staff, Integrated HQ, Ministry of Defence(NAVT), (PDCPS), New Delhi who in turn was directed to dispose of the same with a reasoned and speaking order.

9

4. Pursuant to the aforesaid direction of this Tribunal, respondents have now issued the Annexure A-8 letter No.CPT(PP)/0017-PG/TJ dated 4.12.2008 rejecting his request to switchover to the Pension Scheme. In the said letter it was specifically denied the contention of the applicant that he was not intimated of the nature and benefits of the new Pension Scheme. On the other hand, they have pointed out that in his option dated 31.3.1987, he very categorically stated that "*having understood the comparative advantages and disadvantages of the pensionary and provident benefits, as applicable in my case, I opt to continue under the existing CPF benefits.*" It was further pointed out in the said letter that the issue has been deliberated by the Parliamentary Committee on Petitions and the Government has explained its stand on this issue to the above committee that no exceptions can be made to those Government employees who had opted in 1987 to remain in CPF Scheme because it will have a cascading effect in the entire Government.

5. According to Shrii P.V.Mohanan, learned counsel for the applicant, the aforesaid Annexure A-8 impugned letter is unfair, unreasonable, improper and violative of Article 14 of the Constitution of India. He has submitted that all the policy decisions adopted by the Government are also subject to the provisions of Article 14 of the Constitution of India. Further, he has argued that in terms of the Annexure A-1 scheme itself all who were in service as on 1st January, 1986 and who were in service on the date of issue of the orders will be deemed to have come over to the Pension Scheme and thus applicant deemed to have come over to the pension Scheme. He has also submitted that Rule 88 of the Pension Rules should have been invoked in the case of the applicant so that his claim could have given a special consideration by the respondents.

[Handwritten signature/initials]

6. The respondents have filed the reply statement and contended that it was a conscious decision of the applicant not to switchover from CPC Pension Scheme and he remained under the CPF scheme for 20 years. Even though, he was given several opportunities to switchover to the CPF scheme, he stuck to decision to continue to be governed under the CPF scheme.

7. We have heard Shri P.V.Mohanam, learned counsel for the applicant and Shri Sunil Jacob Jose, SCGSC for respondents. Even though, it is the settled position of law that once option exercised it will always continue to be so the respondents gave the applicant several opportunities to switchover from CPF Scheme to GPF/Pension Scheme. For all his 23 years of service, he insisted that he should be governed by the CPF scheme alone. The opportunities given to him to switch over to the GPF/Pension Scheme even in the years 1994 and 1997 were stubbornly rejected by him. He was adamant about his option for CPF scheme. It was only at the fag end of his service he changed his mind and it was too late for him as his date of superannuation was 28.2.2007. It was purely the discretion of the respondents to permit him any change in such circumstances. Respondents have considered his belated representation at the instance of this Tribunal but they have rejected the same on the ground that such relaxation will have cascading effect in the Department which is quite true. We, therefore, do not find any reason to interfere with the aforesaid decision of the respondent-department. Since the applicant has already retired from service and the respondents have settled his terminal benefits in terms of the CPF scheme, we do not find any good reason to direct the respondent to reopen it. Accordingly, the O.A is dismissed. There shall be no order as to costs.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER