

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 616 /2007

Monday, this the 23rd day of June, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Thampi 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. Flag Officer Commanding-in-Chief,
Head Quarters,
Southern Naval Command, Kochi.
3. The Accounts Officer,
Office of the PCDA (Navy),
Fund Cell, Mumbai.

.....Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 10.6.2008, the Tribunal on 23.6.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER


The applicant is aggrieved by the Annexure A-5 letter dated 2.4.2007 by which he was not permitted to change over from the Contributory Provident Fund (CPF for short) Scheme to GPF/Pension Scheme. He is also aggrieved by Annexure A-6 order dated 22.2.2007 informing him that his request for granting pensionary benefits was taken up with competent authority at Headquarters,

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Southern Naval Command, Kochi but they have clarified that as per Rule 50(1) (a) of CCS(Pension) Rules, 1972, and para 4 of the Government of India Decision No.6 thereunder service gratuity and retirement gratuity are not admissible in the case of re-employed personnel. He challenged those letters and sought the following reliefs in this O.A:

- (a) To call for records leading to A-5 and A-6 and set aside the same.
- (b) To direct the respondents to grant pension/DCRG to the applicant under Central Civil Services (Pension) Rule, 1972 with effect from 1.3.2007 by reckoning the qualifying service from 21.3.1984 to 28.2.2007 in Naval Ship Repair Yard and disburse the same.
- (c) To direct the first respondent to relax the rigor contained in CCS(Pension) Rule, 1972 by invoking the provision contained under Rule 88 of the rules and to grant pension to the applicant.
- (d) To direct the respondent No.2 and 3 to fix the last pay of the applicant in the revise scale at the time of retirement by taking note of the basic pay at Rs.390/- in the scale of pay of Rs.330-480 with effect from 18.6.1986 and to fix the terminal benefits including pension/DCRG with effect from 1.3.2007 and disburse the same.

2. The applicant is an ex-Air Force personnel retired on 31.7.1981. On 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 he superannuated as a Master Craft Man on 28.2.2007. He was an optee under the CPF Scheme. After the acceptance of the recommendation of the 4th Central Pay Commission that all CPF beneficiaries in service as on 1.1.1986 should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF scheme, Government of India, vide Annexure A-1, Department of Pension & Pensioners Welfare OM No.4/1/87-P.I dated 1.5.1987, gave option to all CPF beneficiaries to change over from CPF to pension system. Accordingly, the respondents required the employees 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, the applicant made a representation on 25.10.2006 (Annexure A-4) to the Chief of the Naval Staff, Naval HQ, to permit him to changeover from CPF to GPF scheme. Contention of the applicant 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 second respondent, i.e. Flag Officer Commanding-in-Chief, Head Quarters, Southern Naval Command, Kochi. 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-5 impugned 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-I dated 10.5.1987, option once exercised by 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.

3. The Chief Staff Officer (Personnel & Administration), Southern Naval



Command, Kochi, in his reply on behalf of the respondents submitted that the applicant refused to changeover to GPF scheme inspite of several opportunities given to him. He has also submitted that in terms of Annexure A-1 letter dated 1.5.1987 options once exercised would be treated as final. In this regard, he relied upon an order of this Tribunal in O.A.790/2004 [E.Godfred v. Union of India & others]dated 7.12.2005 in which it is held as under:

"...It is a settled position that once an option is exercised, it will always continue to be an option and if this court intervenes in granting reliefs on a changed option date, that will create so much confusion in the field. The Hon'ble Supreme Court has also laid down the scheme supporting this concept in **Union of India v. Jaiswal** reported in AIR (1994) SC 2750.

8. Considering the facts and circumstances of the case, we are of the view that, since the applicant has made a wrong option, all these benefits have been denied to him. No mistake has been committed on the part of the respondents. In the circumstances, the applicant has not been able to make out a case for interference by this Tribunal and the claim of the applicant being devoid of any merit, liable to be rejected.

9. Accordingly, we dismiss the O.A. with no order as to costs."

4. With regard to the relief for fixation of his basic pay at Rs.390/- with effect from 18.6.2006, the submission of the respondents is that the applicant has concealed the fact that he had been drawing the basic pay of Rs.390/- in the post of Weapon Fitter HS-II with effect from 18.6.2006 as per the sanction accorded to him vide (Annexure R-2) letter dated 23.12.1986 which reads as follows:

"Subject: Fixatgion of pay of Shri Thampi John on his re-employment as Weapon Fitter (HS-II) in BRO Cochin (PPO No.S/C/7686/81 and S/C/3076/80)
Sir,

I am directed to refer to AAO CDA(N) Cochin letter No.107/Ind/ES/PF dated 19.11.86 addressed to the Chief of Naval Staff, New Delhi and to convey the sanction of the Ministry of Defence to the fixation of pay of Shri Thampi John on his re-employment as Weapon Fitter (HS-II) in BRO Cochin at Rs.390 in the scale of Rs.330-8-370-10-400-EB-10-480 with effect from 18.6.86 in addition to pension but without adhoc relief in the Ministry of Defence OM No.2(54)58/2001/D(Civ.I) dated 1st July, 1960 read with their OM No.2(1)83/D(Civ.I).


2. He will be granted annual increment in the normal manner as and when due.



3. The arrears of pay and allowances, if any, accruing as a result of above fixation of pay will be admissible.
4. This Ministry's letter No.CP(P)/9153/NHQ/4079/D(Civ) dated 30.8.84 is hereby cancelled.


On implementation of the IVth Central Pay commission recommendations, the pay of the applicant had been fixed at Rs.1260/- in the pay scale of Rs.1200-30-1800 which is corresponding pay to the pre-revised pay of Rs.390/-.

5. I have heard Shri PV Mohanan, counsel for applicant and Shri TPM Ibrahimkhan, SCGSC for respondents. Applicant is an ex-Air Force personnel. He was re-employed in the Naval Ship Repair Yard on 23.3.1984 and he was governed by the CPF Scheme. Though Government of India, accepting the recommendations of the IVth Central Pay Commission has allowed all CPF beneficiaries who were in service on 1.1.1986 and who were still in service on the date of issue of Annexure A-1 order dated 1.5.1987 to change over to the pension scheme, the applicant opted to continue under the CPF scheme. Rather, he was the only person in his Department who has not changed over to the GPF/Pension scheme. This anomalous situation was noticed by the Accounts Officer(N) and he sought explanation from the respondents in this regard vide his Annexure A-2 letter dated 21.9.2004. The response of the respondents to the aforesaid query of the Accounts Office was that the matter was under consideration and to await for further communication (Annexure A-3 letter dated 8.2.2005). It appears that the respondents have not pursued this matter further. Finally, when the applicant realised that he will be faced with great financial loss, he made his representation dated 3.10.2006 to changeover to the GPF scheme. This was just a couple of months before his retirement. Though it has been stated in the Annexure A-1 letter dated 1.5.2007 that the options once exercised shall be final, being a beneficial scheme, it appears that the respondents were inclined to bring him under the GPF Scheme even in 2005.



However, after the Annexure A-2 letter dated 21.9.2004 and its Annexure A-3 reply dated 8.2.2005, no further action was taken in this regard. In fact the 2nd respondent has taken a very favourable view in the matter vide his Annexure A-4 letter dated 25.10.2004 by recommending to the Chief of the Naval Staff, Integrated HQ, Ministry of Defence (Navy) (PDCPS), New Delhi to consider the representation of the applicant dated 3.10.2006 requesting for option to change from CPF Scheme to GPF Scheme/Pension Scheme. However, the concerned authority at Head quarters, Southern Naval Command, Kochi did not find it necessary to forward his representation to the Chief of the Naval Staff and held that there was no justification for approaching the Government for relaxation in his case, as he had exercised option on his own on 30.3.1987 to continue under the CPF scheme. In my considered opinion, the applicant should not have been denied his right for consideration of his representation dated 25.10.2006 made to the Chief of the Naval Staff, Integrated HQ, Ministry of Defence (Navy) (PDCPS), New Delhi. Considering the circumstances explained by the applicant in his representation, it was upto that authority to take an appropriate decision in the matter. I, therefore, permit the applicant to make a fresh representation to the Chief of the Naval Staff, Integrated HQ, Ministry of Defence (Navy) (PDCPS), New Delhi who in turn shall consider the same and dispose of it with a reasoned and speaking order within a period of two months from the date of receipt of the same.

6. As regards his prayer to fix the last pay in the revised scheme at the time of retirement taking note of the basic pay at Rs.390/- in the scale of Rs.330-480 with effect from 18.6.1986 and to fix the terminal benefits including pension/DCRG with effect from 1.3.2007 and disburse the same, the respondents have already clarified that vide Annexure R-2 letter dated 23.12.1986, the applicant's pay on his re-employment has already been fixed as



Weapon fitter (HS-II) in BRO Cochin at Rs.390/- in the scale of pay Rs.330-8-370-10-400-EB-10-480 with effect from 18.6.1986. Accordingly, this prayer has become infructuous.

7. In the above facts and circumstances, the O.A is partly allowed as stated in para 6 above. There shall be no order as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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