

(39)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

G.A. No.

199

T.A. No. 3/2000 (SBCWP No.3039/96)

DATE OF DECISION 08.01.2001

Hari Raj Swaroop Sharma

Petitioner

Mr. Rajendra Vaish

Advocate for the Petitioner (s)

Versus

Kendriya Vidyalaya Sangthan & Anr.

Respondent

Mr. V.S.Gurjar

Advocate for the Respondent (s)


CORAM :

The Hon'ble Mr. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒


(N.P.NAWANI)
Adm. Member


(B.S.RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 8.1.2001

TA No.3/2000 (SBCWP No.3039/96)

Hari Raj Swarcep Sharma s/o Shri Ram Gopal Sharma r/o 2/505,
Malviya Nagar, Jaipur

.. Applicant

Versus

1. Kendriya Vidyalaya Sangthan through its Commissioner, Saheed
Jeet Singh Road, New Delhi.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangthan,
Jaipur Region, Bajaj Nagar, Jaipur

.. Respondents

Mr. Rajendra Vaish, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Justice Mr. B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Newani, Administrative Member

Order

Per Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

It appears that the applicant filed a Writ Petition in the Hon'ble High Court in S.B.Civil Writ Petition No.3039/96 but in view of the notification dated 17th December, 1998 issued by the Government of India, the matter has been transferred to this Tribunal by the Hon'ble High Court. Accordingly the same has been re-numbered as TA No.3/2000.

2. Heard. The grievance of the applicant is that there should be direction to the respondents for counting of the past services of the applicant from 1962 to 1977 which he rendered under the Government of Madhya Pradesh, as qualifying service, for pension.

3. The applicant has stated that he was first appointed as

Junior Lecturer (Mathematics) vide Ann.A1 dated 5th July, 1962 in the Government Higher Secondary School Thikari (Khargone) [Madhya Pradesh]. While he was in service under the Government of Madhya Pradesh, applications were called for regarding appointment for the post of PGT (Mathematics) in Kendriya Vidyalaya Sangthan, and accordingly he applied for the same and he was selected and appointed on the post of PGT (Mathematics) and consequently posted in Kendriya Vidyalaya at Kota. He underwent some transfers meanwhile, and ultimately he was posted at Kendriya Vidyalaya Jaipur from which he retired w.e.f. 31.12.1998, but his pension has been fixed on the basis of the services he rendered in Kendriya Vidyalaya, and his past services that he had rendered under the Government of Madhya Pradesh is not taken into account while fixing his pension. Therefore, he seeks directions at the hands of this Tribunal to fix the pension of the applicant by taking into account his past services.

4. By filing a counter the respondents have denied the contentions of the applicant. They have stated that unless the Government of Madhya Pradesh contributes their share regarding the service rendered under the State of Madhya Pradesh., the present respondents would not be in a position to take into account his past services. They have further stated that though they pursued the matter with the Government of Madhya Pradesh but so far they have not received any reply. They have also stated that the respondents have been trying to get the pro-rata benefits from the Government of Madhya Pradesh but the Government of M.P. is not responding and they did not even send a reply to the letter sent to them. In substance, they contended that unless pro-rata benefits are contributed by the Government of M.P., Kendriya Vidhyalaya Sangthan would not be in a position to take into account his past services rendered under the State of M.P. for fixing his pension



and accordingly they contended that there cannot be any direction to the respondents and the application is liable to be dismissed.

5. The learned counsel for the applicant strenuously relied upon the Central Civil Service (Pension) Rules. On the other hand, the counsel appearing for the respondents contended that, no doubt, CCS (Pension) Rules have been adopted by the Kendriya Vidyalaya Sangathan but there is a separate Office Memorandum issued by the Government of India dated 29th August, 1984, which had been made applicable by the subsequent OM of the Government of India (vide decision No.7 Appendix 12 of the Pension Rules). At the outset, we may point out that the OM referred to by the learned counsel for the respondents pertains to the transfer of persons between the Central Government or Autonomous bodies and State Government/autonomous bodies and vice-versa (i.e. when an employee is transferred from an autonomous body of Central Government to the State and from some autonomous body of the State Government to Central Government). But this is not a case of that type. In the instant case, the applicant was duly employed under the Madhya Pradesh Government. Subsequently he was appointed on selection under the Kendriya Vidyalaya Sangathan. In such a situation, whether his past services could be counted for the purpose of pension is the one governed either by the Pension Rules itself or by any other circular of the Central Government. When the Pension Rules are adopted by the Kendriya Vidyalaya Sangathan, whatever the decision of the Government of India with reference to those Rules would be applicable. But the counsel appearing for the applicant relied on decision No.5 referred to in Swamy's Compilation under Rule 14. We find that as per the agreement between the State Government and the Central Government, an arrangement has been arrived at so as to take liability of the past services rendered by certain categories of employee either under the State Government or Central




Government. In other words, regarding the contribution, if any, of a person served under the Central Government the liability of the past services under the Central Government would be borne by the State under which he retired ultimately and vice-versa. The issue relating such past services is a matter of agreement. In this context the decision No.5 under Rule 14(5) of CCS (Pension) Rules reads as under:-

"(5) Allocation of leave salary and pension contribution between Central and State Governments and between two State Governments dispensed with.- 1. The Government of India appointed a Committee to review the existing General Financial Rules and Treasury Rules and Account Code, Volume I and to make conceptual suggestions for their revision so as to simplify and rationalise these rules. The Committee in Chapter 5 of its Second Report has examined the existing system of allocating the liability on account of leave salary and pensionary charges of the Government servants who have served under the Central Government and State Governments as contained in Appendix 3-B-II and B-IV to Account Code, Volume I and made the following recommendations:-

(a) The practice of realising leave salary contribution may be dispensed with altogether as this is a very small fraction of amounts payable to State Governments on account of deputation of their officers to the Central Government.

(b) Recovery of leave/pension contribution in respect of inter-State transactions, which must be few and far between and could be given up.

(c) In regard to pensionary liability the Central Government may forgo any contribution recoverable from the State Governments and to whom Central Government Officers are deputed.



(d) In lieu of Central Government liability towards pension of State Government Officers (mainly All India Service Officers) who are deputed to Centre for varying spells and ad hoc grant payable to each State Government may be worked out at the beginning of the financial year and disbursed to them in one lump sum as Grant-in-aid (Non-Plan) on the basis of a simple formula which takes into account cadre strength, and average length of deputation on All India Service Officers to Central Government.

2. Pursuant to the above, it has been decided in consultation with the State Governments to dispense with the system of allocation of leave salary and pension between Central and State Governments as specified below-


(a) Leave Salary. - The existing system of allocation or sharing of the liability on account of leave salary contributions by the Central Government to State Governments or vice versa will be dispensed with. The liability of leave salary will be borne in full by the Department from which the Government servant proceeds on leave, whether it be his parent Department or a borrowing Department with whom he is on deputation.

(b) Pension. - The liability for pension including gratuity will be borne in full by the Central/State Department to which the Government servant permanently belongs at the time of retirement. No recovery of proportionate pension will be made from Central/State Government under whom he had served."

From the above extracted portion, it is clear that the Government of India has taken over the liability of the services rendered by the persons who are taken by the Government of India from the State Service on deputation basis. Even the Committee's report referred to in the above decision also pertains to the pension liability of the officers on deputation to the Central Government. The applicant, in the instant case, is not a person on

deputation from the State of Madhya Pradesh to Kendriya Vidyalaya Sangathan. In fact, he is appointed by selection by the Kendriya Vidyalaya Sangathan for which the State of Madhya Pradesh had no objection. From this it follows that the decision No.5 of the Government of India does not help the case of the applicant. Therefore, the contention of the applicant based on decision No.5 of the Government of India under Rule 14 of the CCS (Pension) Rules is liable to be rejected.

6. Now we proceed to consider the second contention argued by the learned counsel for the applicant. The learned counsel for the applicant contended that as per the Office Memorandum of Kendriya Vidyalaya Sangathan dated 1.9.1983, Kendriya Vidyalaya Sangathan provided a Pension Scheme under which a person contributing Contributory Provident Fund would be automatically covered under the Pension Scheme. However, it is open to the applicant to opt the Contributory Provident Fund instead of pension governed by the Pension Scheme. He submitted that the applicant did not opt for payment of Contributory Provident Fund but he decided to be governed by the Pension Scheme. He also further submitted that the General Provident Fund which the applicant was contributing under the State of Madhya Pradesh when he was in service there, the entire Fund was transferred to the Kendriya Vidyalaya Sangathan as acknowledged by the Accounts Superintendent of the Kendriya Vidyalaya Sangathan, Delhi vide his letter dated 21.10.1980. He stated that on the basis of the entire Provident Fund with the Kendriya Vidyalaya Sangathan including the GPF contribution under the State of Madhya Pradesh, the applicant would be entitled to pension for the entire service rendered ^{by} him under the State of Madhya Pradesh as well as under Kendriya Vidyalaya Sangathan in view of the scheme of the Kendriya Vidyalaya Sangathan dated 1.9.1983. The fact that the applicant's Provident Fund accruing to



the applicant in the GPF Account on the basis of his services under the State of Madhya Pradesh is transferred to the Kendriya Vidyalaya is not disputed by the respondents. The respondents have also not disputed the Scheme announced by the Kendriya Vidyalaya dated 1.9.1983

7. In order to appreciate the rival contentions, we would like to extract the relevant paragraph of the said Scheme dated 1.9.1983 as under:-

“ केन्द्रीय विद्यालय संगठन

नया महरौली मार्ग,
नई दिल्ली-110067

संस्क. 152-1/79-80/को. सं./बजट/भाग-2/

दिनांक-1.9.83.

कार्यालय ज्ञापन

विषय:- केन्द्रीय विद्यालय संगठन के कर्मचारियों का अंशदायी भविष्य निधि योजना से पेंशन योजना में परिवर्तन।

केन्द्रीय विद्यालय संगठन के अधिशासी मण्डल की दिनांक 31 मई, 1988 को आयोजित 51 वीं बैठक में यह अनुमोदित किया गया था कि चतुर्थ केन्द्रीय वेतन आयोग की सिफारिश पर भारत सरकार द्वारा अपने कर्मचारियों के लिए अंशदायी भविष्य निधि योजना को पेंशन योजना में परिवर्तन करने के सम्बन्ध में लिये गए निर्णय को यथापरिवर्तन के साथ मूलरूप में उसी प्रकार केन्द्रीय विद्यालय संगठन में कार्यान्वित किया जाए जैसा कार्मिक, लोक शिकायत और पेंशन मंत्रालय पेंशन और पेंशन भोगगियों का कल्याण विभाग के दिनांक 1.5.1987 के कार्यालय ज्ञापन संख्या 4/1/87-पी.आई.सी. में निर्दिष्ट किया गया है।

2. तदनुसार यह निर्णय लिया गया है कि दिनांक 1.1.1986 को या इसके उपरान्त संगठन की सेवा में आने वाले व्यक्ति केवल सामान्य भविष्य निधि व पेंशन योजना से नियंत्रित होंगे तथा अंशदायी भविष्य निधि के लिए कोई विकल्प नहीं होगा। तथापि, अंशदायी भविष्य निधि का लाभ प्राप्त कर रहे उन सभी कर्मचारियों के लिए जो दिनांक 1.1.1986 को सेवा में थे जो निर्णय लिया गए उसे आगे वर्णित रूप में कार्यान्वित किया जाएगा।

3. अंशदायी भविष्य निधि का लाभ ले रहे वे कर्मचारी जो दिनांक 1.1.1986 को सेवा में थे और इन आदेशों के जारी होने की तारीख तक भी सेवारत हैं तो उन्हें पेंशन योजना के अंतर्गत माना जाएगा।

3.2. तथापि, उपर वर्णित वर्ग के कर्मचारियों के लिए विकल्प है, कि यदि वे चाहें तो अंशदायी भविष्य निधि के अंतर्गत ही रह सकते हैं। यदि कर्मचारी अ.भ.नि. योजना के अंतर्गत रहना चाहते हों तो उन्हें इस विकल्प का प्रयोग कर दिनांक 31.1.1989 तक सम्बन्धित कार्यालय के प्रमुख/प्राचार्य को संलग्न फार्म पर दो प्रतियों में अपना विकल्प देना होगा। विकल्प की दो प्रतियों में से एक प्रति इस कार्यालय को भेजी जाए और दूसरी प्रति संबंधित के निजी रिकार्ड में रखी जाए। यदि कार्यालय प्रमुख/प्राचार्य को उपरोक्त तारीख तक और इस कार्यालय में उनके माध्यम से 28.2.1989 तक कोई विकल्प प्राप्त नहीं होता है तो यह समझा जाएगा कि कर्मचारी पेंशन योजना के अंतर्गत आ गए हैं। अ.भ.नि. योजना में रहने के लिए कार्यालय प्रमुख/प्राचार्य द्वारा कर्मचारियों से प्राप्त किए गए विकल्प एक ही बार लाट में इस कार्यालय को अर्पित किये जाने हैं तथा उन्हें संगठन के कार्यालय में 28.2.1989 तक अवश्य पहुंच जाना चाहिए। यदि अ.भ.नि. योजना में रहने के लिए कोई विकल्प प्राप्त नहीं होता है तो निर्धारित तिथि अर्थात् 28.2.89 तक "शून्य" रिपोर्ट भेजी जाए।

3.3. अ.भ.नि. का लाभ ले रहे जो कर्मचारी दिनांक 1.1.1986 को सेवा में थे लेकिन तदुपरांत सेवा निवृत्त हो गए हैं और जिन्हें सेवानिवृत्त के लाभों का भुगतान अ.भ.नि. योजना के अंतर्गत किया गया है जो उनके लिए भी विकल्प होगा कि वे अपने सेवानिवृत्ति के लाभों को पेंशन योजना के अंतर्गत इस शर्त पर संगणित करवा लें कि उन्हें अ.भ.नि. के खाते के निपटान के समय जो अंशदायी भविष्य निधि के संगठन का अंश प्रबंधन का हिस्सा और उस पर ब्याज का भुगतान किया गया है उसे वे संगठन को वापस कर दें। इस विकल्प का

इस विकल्प का प्रयोग 31.1.89 तक किया जा सकेगा ।”


From the above Scheme, it is clear that Kendriya Vidyalaya Sangthan provided a Pension Scheme in lieu of Contributory Provident Fund and if a person is a subscriber to the CPF and his fund is with the Kendriya Vidyalaya Sangthan, the employee would be entitled to the Pension Scheme by foregoing the amount in CPF in favour of the Kendriya Vidyalaya Sangthan. Therefore, it was provided that those persons who were having CPF with the Kendriya Vidyalaya would be covered by the Pension Scheme. However, an option was given to an employee to opt to claim CPF instead of Pension Scheme. In the instant case, the applicant did not opt for CPF and hence he was automatically covered by the said Pension Scheme. When the applicant's earlier contribution in GPF under the State of Madhya Pradesh stood merged with the CPF of Kendriya Vidyalaya Sangthan and ultimately forming part of one fund as CPF, the applicant would be automatically entitled to the Pension Scheme. It is nobody's case that the applicant claimed the said Provident Fund amount at any point of time by exercising a specific option in terms of the said Scheme. From this it follows that the applicant's past contribution of GPF under the State of Madhya Pradesh being transferred to the Kendriya Vidyalaya Sangthan, the liability is created against the Kendriya Vidyalaya Sangthan to pay the pension even regarding his past services rendered under the State of Madhya Pradesh. The net result is that on the basis of such a Provident Fund with the Kendriya Vidyalaya Sangthan, the applicant would be automatically covered by the Pension Scheme both for the past services under the State of Madhya Pradesh and also for the services he rendered under the Kendriya Vidyalaya Sangthan. Therefore, on the basis of the Provident Fund with the Kendriya Vidyalaya Sangthan and in terms of the Scheme dated 1.9.1983, the

12/11

applicant would be entitled to entire pension and the respondents are duty bound to revise his pension for the entire service rendered by him.

8. A similar case arose before the High Court of Punjab and Haryana in a reported decision in 2000(1) SCT 565, Prof Dr. R.R.Sharma (Retd.) vs. Post Graduate Institute of Medical Education and Research, Chandigarh. In that case the writ petitioner was denied the proportionate pension for his services rendered under the State of Uttar Pradesh. That was also a case where the petitioner therein was appointed as a Lecturer in Government of Uttar Pradesh and later he was appointed under the Post Graduate Institute of Medical Education and Research, Chandigarh (Post Graduate Institute) and at the time of his retirement from the Post Graduate Institute, he had completed continuous qualifying service of 35 years. The High Court of Punjab and Haryana, in the circumstances, directed the Post Graduate Institute to pay his entire pension for the entire service rendered including the services rendered by him under the State of Uttar Pradesh by passing the following order:-

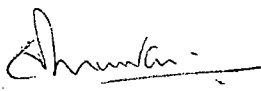
"12. The writ petition is allowed. The Post Graduate Institute is directed to pay to the petitioner the full amount of pension and the full amount of gratuity counting his qualifying and continuous combined service from September 25, 1954. This shall be done without any more waiting for the receipt of the proportionate amount from the Uttar Pradesh Government and Karmal Institute. The arrears shall be paid to the petitioner within three months from the date of this order with interest at the rate of 12% per annum from November 1, 1991 till the next date of payment. The Post Graduate Institute shall be at liberty to recover the amount



of proportionate liability from the Uttar Pradesh Government and the Karnal Institute. It is further ordered that the Uttar Pradesh Government and the Karnal Institute shall pay the proportionate amount towards pension and gratuity to the post Graduate Institute within three months from the date of this order."

9. By applying the above decision, we think it appropriate to clarify in this case that in case Kendriya Vidyalaya Sangthan decides to seek pro-rata contribution from the State of Madhya Pradesh, it is open to them to recover the amount of proportionate liability from the State of Madhya Pradesh or from the Institute where the applicant for the first time employed in the State of Madhya Pradesh. Accordingly, we pass the order as under:-

The application is allowed. The respondents are hereby directed to refix the pension of the applicant taking into account his past services rendered under the State of Madhya Pradesh. This exercise shall be done within a period of three months and accordingly the applicant's pension shall be refixed. The applicant shall get arrears due within a period of one month thereafter. We make it clear that the Kendriya Vidyalaya Sangthan shall be at liberty to recover the amount of proportionate liability from the State of Madhya Pradesh or from the Government Higher Secondary School, Thikari, Khargone (Madhya Pradesh) where the applicant was appointed as Lecturer in Mathematics for the first time by virtue of selection being made by the Director of Public Instruction, Madhya Pradesh, Bhopal vide order dated 5th July, 1962 (Ann.A1) . No costs.


(N.P. NAWANI)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman