

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

17.04.2009

OA No. 566/2005 with MA 408/2005

Ms. Surendra Singh, Proxy counsel for
Mr. M.S. Gupta, Counsel for applicant.
Ms. Usha Singh, Proxy counsel for
Mr. V.s. Gurjar, Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the OA is
disposed of.

(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 17th day of April, 2009

ORIGINAL APPLICATION NO. 566/2005

With

Misc. Application No. 408/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER.

Mrs. Kamlesh Sharma wife of Shri Naresh Kumar Sharma, aged about 39 years, Lower Division Clerk, Kendriya Vidyalaya, Itarana, District Alwar (Rajasthan).

.....APPLICANT

(By Advocate: Mr. Surendra Singh Proxy to Mr. M.S. Gupta)

VERSUS

1. Deputy Commissioner, Kendriya Vidyalaya Sangathan, 18, Industrial Area, Shaheed Jeet Singh Marg, New Delhi.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Kankarbagh, P.O. Lodiya nagar, Patna (Bihar).
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, 91, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
4. Principal, Kendriya Vidyalaya, Mughalsarai, District Varanasi, U.P.

.....RESPONDENTS

(By Advocate : Ms. Usha Singh proxy to Mr. V.S. Gurjar)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) The most humble applicant respectfully prays the Hon'ble Tribunal to please allow and admit the Original Application.
- (ii) The Hon'ble Tribunal is humly prayed to direct the respondents to make payments of family pension, death gratuity, encashment of leave, Central Govt. Employees' Group Insurance Scheme payments, deposit linked Insurance Scheme payments, General Provident Fund/ Contributory Provident Fund accumulations, Traveling Allowance for family members, arrears of salary of the last month of the missing/ deceased employee named Shri Naresh Kumar Sharma, Ex-gratia on death while on duty in service etc. with interest to the

applicant, the widow of Shri Naresh Kumar Sharma who is missing/died since 1.6.1985.

- (iii) The Hon'ble Tribunal is humbly prayed to allow the cost of the case in favour of the humble applicant.
- (iv) Any other direction or order as may be deemed just and proper in the facts and circumstances of the case and in favour of the humble applicant be also prayed."

2. Briefly stated, facts of the case are that the husband of the applicant while serving with the respondents department did not attend the duty after 01.06.1985. In fact the husband of the applicant was missing since then. The grievance of the applicant is regarding payment of family pension and other retiral benefits.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that the husband of the applicant is missing/died since 01.06.1985. It is further submitted that prior to introduction of the Family Pension Scheme, the Scheme was Contributory Provident Fund Scheme. It is further submitted that on the introduction of the Family Pension Scheme the employees of Kendriya Vidyalaya Sangathan were called upon to submit their option, if they wanted to switch over to Family Pension Scheme. As the husband of the applicant, Late Shri Naresh Kumar Sharma, was not in service since he did not report for duty after 01.06.1985 and no option was exercised by him, hence in such circumstances the claim of the applicant for family pension is not sustainable in the eyes of law. For that purpose, the respondents have placed reliance on the Constitution Bench of the Hon'ble Supreme court in the case of Krishna Kumar vs. Union of India, 1990(4) SCC 207 whereby the Hon'ble Supreme court has held that Contributory Provident Fund Scheme form a different class from those who had opted for Pension Scheme by exercise of option by a specific date in the year 1988, and as such they are not entitled now to claim as of right to switch over from Contributory Provident Fund Scheme to Pension Scheme. Thus according to the respondents, the claim of the applicant for family pension and other consequential benefits is not sustainable in the eyes of law. It is further stated that the applicant is eligible for CPF contribution as well as management share on CPF and a sum of Rs.57,471/- which was payable to the applicant, a Demand Draft was prepared but the applicant

had returned the same with remarks as refused. Thus according to the respondents, the applicant is not entitled to any relief.

4. I have heard the learned counsel for the parties and have gone through the material placed on record.

5. The fact remains that the applicant is missing since May, 1985, as such there is presumption in law that the person might have died in case he is not traceable within a period of seven years. Now the question which requires my consideration is whether the applicant is entitled to the pensionary benefits in view of the introduction of the Family Pension Scheme in the year 1988. Learned counsel for the applicant has drawn my attention to the decision of Jaipur Bench of the Tribunal in the case of **Mrs. Alka Agarwal vs. Kendriya Vidyalaya Sangathan & Another,** (OA No. 301/2004) decided on 08.11.2005 in which this Tribunal has held that in case a person has not exercised any option to switch over CPF Scheme to Pension Scheme, it shall be deemed that he will be governed by the Pension Scheme. Based on this judgment, learned counsel for the applicant submits that the husband of the applicant has not exercised any option for switching over from CPF Scheme to Pension Scheme, he shall be deemed to have been governed by the Pension Scheme, as such the applicant is entitled to the family pension.

6. I have given due consideration to the submission made by the learned counsel for the applicant. I am of the view that judgment of this Tribunal is not applicable in the facts & circumstances of this case. It may be stated that the husband of the applicant was missing since 01.06.1985, till that date the applicant was contributing towards CPF Scheme. On that date the Pension Scheme was not in vogue. Pension Scheme was introduced by the respondents in the year 1988. In the year 1985, the applicant was missing and presumed to have been died. Since at that time there was no Pension Scheme, as such the applicant is not entitled to the benefit under the Pension Scheme, which was admittedly introduced in the year 1988 onwards. Thus according to me, the applicant is not entitled to any relief. Besides what has been stated above, the applicant is also not entitled to any relief in view of the law laid down by the Apex Court in the

case of **V.K. Ramamurthy vs. Union of India**, AIR 1996 SCC 2658 whereby the Apex Court has considered its earlier decision Krishna Kumar (supra) and also taken into consideration the decision of State of Rajasthan vs. Rajasthan Pensioner Samaj, 1991 Supp. (2) SCC 141 whereby it was held that Contributory Provident Fund retirees form a different class from those who had opted for Pension Scheme and as such they are not entitled to claim as of right to switch over from Provident Scheme to Pension Scheme and consequently the Contributory Provident Fund Scheme retirees are not entitled to the benefits granted to the Pension Retirees. In the aforesaid decision, the Apex Court has also taken into consideration another decision in case of All India Reserve Bank Retired Officers Association vs. Union of India, 1991 Supp (1) SCC 644, in which case the Court was also considering the case of the Pension Scheme and Contributory Provident Fund Scheme and held that in case of an employee governed by the Contributory Provident Fund Scheme his relation with the employer come to an end on his retirement and receipt of the Contributory Provident Fund amount but in the case of an employee governed under the Pension Scheme his relation with the employer merely undergo a change but do not snap altogether. It is for this reason in case of pensioners it is necessary to revive the Pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the Pension amount but this is not the case of employee governed under the Contributory Provident Fund Scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends and this distinction between those belonging to the Pension Scheme and those belonging the Contributory Provident Fund Scheme has been rightly emphasized by the Court in Krishna Kumar's case.

7. Thus in this case relation of the husband of the applicant with the employer come to an end on 01.06.1985 since when he was missing was deemed to have died in terms of decision rendered by the Apex court in the case of All India Reserve Bank Retired officers Association (supra). On that date, admittedly the Pension Scheme was not in force which was introduced in the year 1988. Thus, the applicant is not entitled to claim the



benefit under the Pension Scheme, which was introduced subsequently by the respondents in the year 1988. Thus the question regarding switching over Contributory Provident Fund Scheme to Pension Scheme subsequently does not arise.

8. Learned counsel for the applicant submits that even if the applicant is not entitled to the benefit under the Pension Scheme, he also entitled to the benefit of leave encashment, gratuity etc. besides contribution made by him to the Contributory Provident Fund Scheme, the said amount has not been paid to the applicant. At this stage, I wish to clarify that the above finding has been given only to the entitlement of the applicant regarding benefit under family Pension Scheme. In case the applicant is entitled to other reliefs, as prayed for by him, it will be permissible for her to pursue the case with the Department and I see no reason why the respondents shall not settle the claim of the applicant which is due to her in accordance with law expeditiously. For that purpose, the applicant may make representation to the appropriate authorities who will examine the same in accordance with law.

9. With these observations, the OA is disposed of with no order as to costs.

10. In view of the order passed in the OA, no order is required to be passed in MA No. 408/2005, which is also disposed of accordingly.


(M.L. CHAUHAN)
MEMBER (J)

AHQ