

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

8th September, 2009

OA. 478/2006

Present: Shri Rajendra Vaish, counsel for applicant
Shri V.S.Gurjar, counsel for respondents

Heard counsel for the parties.

Judgment reserved.



(M.L. Chauhan)
Member (Judicial)

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10/9/09,
order pronounced
today in the open
Court by the aforesaid
Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 10th day of September, 2009

ORIGINAL APPLICATION No.478/2006

CORAM:

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

Mrs. Vimla Nanda
w/o Tilak Raj Nanda,
r/o 2-TA-12, Jawahar Nagar, Jaipur
working as TGT (Bio),
Kendriya Vidyalaya No.1,
Jaipur.

.. Applicant

(By Advocate: Shri Rajendra Vaish)

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner, 18, Shaheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur

.. Respondent

(By Advocate: Shri V.S.Gurjar)



ORDER

The applicant entered into the service of the Kendriya Vidyalaya Sangathan (hereinafter referred to as KVS) on 10.7.1975. Vide OM dated 1.9.1998 the KVS offered an opportunity to the employees of the KVS to switch over from Contributory Provident Fund (CPF) scheme to General Provident Fund (GPF) cum Pension scheme. The employees who joined the service prior to 1.9.1986 had option to retain the CPF scheme. Accordingly, the applicant exercised her option to retain the CPF scheme. Copy of the option dated 26.9.88 so given by the applicant has been placed on record by the respondents at Ann.R/1. However, it is the case of the applicant that after exercising option for continuance in CPF scheme, she wrote letter dated 28.1.1989 giving in writing that her option for CPF stands withdrawn. It is further pleaded that the respondents did not give reply to this representation and the applicant again submitted representation on 10.6.1992 and 9.9.1992 followed by recent representation dated 21.9.2006. It may be stated here that although the applicant has made averment in the OA that she had made an application dated 28.1.1989 for withdrawal of her option, but the said application was not initially placed on record. The application which has been placed on record is the representation dated 9.9.1992 and representation dated 21.9.2006. Perusal of representation dated 9.9.1992 (Ann.A/3) reveals that the applicant has not made any reference to her earlier representation dated 28.1.1989 but reference has been

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made to the representation dated 10.6.1992 whereby factum of change from CPF to GPF cum Pension scheme has been mentioned and it is further stated that the said request has not been accepted by the authorities so far. It is on the basis of these facts, the applicant has prayed that direction may be given to the respondents to pass order in favour of the applicant to be pension optee and entitled for pensionary benefits under the CCS (Pension) Rules.

3. Notice of this application was given to the respondents. The fact regarding making provision of pension scheme applicable vide OM dated 1.9.1988 and giving of option by the applicant to retain the CPF scheme has not been denied. The respondents have raised objection regarding limitation. It has been stated that the applicant is seeking retrospective revival of cause of action, if any, on the basis of application dated 28.1.1989 and thereafter alleged representation submitted on 10.6.1992 and 9.9.1992. Thus, according to the respondents, repeated representations cannot give rise to fresh cause of action in favour of the applicant for filing OA in the year 2006. It is further stated that from the option exercised by the applicant dated 26.9.1998 it is evident that she exercised her option for continuance in the CPF finally and irrecoverably. Hence, claim of the applicant for pensionary benefits is not sustainable. It is further stated that identical issue was raised and considered by the Apex court in Civil Appeal No. 2676 of 2007 arising out of SLP (c) 23044 of 2005 in the case of Kendriya

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Vidyalaya Sangathan and Ors. vs. Jaspal Kaur and ors. and the Apex Court vide order/judgment dated 6.6.2007 reversed the decision of the Central Administrative Tribunal and the High Court which judgment proceeded on the ground that the respondent therein has not produced the document regarding exercise of option. The Apex Court held that respondent employee was aware about Account number and her CPF subscription in view of the last pay certificate issued to her.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA specifically pleading that option exercised by the applicant on 26.9.1988 was withdrawn by her on 28.1.1989. Since the respondents have not given specific reply as to whether the applicant has withdrawn her option vide letter dated 28.1.1989, opportunity was granted to the respondents to file additional reply. Pursuant to the order passed by this Tribunal on 18.12.2008, the respondents have filed additional reply and in para-1 of the affidavit it has been specifically stated that no such application was received. Rather the Principal was informed by the Superintendent of Accounts, KVS, New Mehrauli Road vide communication dated 10.7.1989 with reference to allotment of revised CPF Account number and the employees subscribing to the CPF on 1.1.1986 and the particular of allotment of fresh account number in respect of CPF subscribers in terms of instructions contained in the OM dated 1.9.1988. The respondents have also produced contemporaneous record including the form of temporary advance submitted by the applicant on 30.1.1992 and

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form No.16 of income of the applicant containing salary details of the applicant to show that in fact on her own showing the applicant was subscribing to the CPF and she has also claimed exemption under the Income Tax Act as an optee of CPF scheme besides other documents.

Thereafter the applicant has filed further counter affidavit to the additional reply filed by the respondents thereby annexing the so called letter dated 28.1.1989 whereby request has been made to the Assistant Commissioner KVS, Jaipur for withdrawal of her earlier option. The learned counsel for the applicant could not explain as to why the letter dated 28.1.1989 (Ann.A/5) annexed with the rejoinder to the additional reply filed on 30.4.2009 was not annexed with the OA filed in the year 2006 when the same was readily available. The learned counsel for the applicant could not give any explanation. The contention raised by the learned counsel that this document has been created subsequently for the purpose of claiming relief and this document does not bear any receipt of the department, as such, no cognizance can be taken of this letter, according to me, such a contention as raised by the respondents cannot be out rightly rejected.

5. Be as it may, I am of the view that for the reasons stated hereinafter the applicant is not entitled to any relief.

6. Facts remain that the applicant exercised her option for continuance in CPF scheme on 26.9.1988. At this stage, it will be relevant to reproduce the option form which is in the following terms:-

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"FORM OF CONTINUOUS RETENTION OF
CONTRIBUTORY PROVIDENT FUND SCHEME

(O.M.No.152-1/79-80/KVS/Bdget/Part-II dated 1.8.1988)

I, Vimla Nanda (Name of the employee) joined service in the Sangathan on my regular appointment as P.R.T. (designation) with effect from 1.8.75 (date) at K.V.Khetri Nagar (Name of KV/office). I have been allotted Contributory Provident Fund (CPF) Account No. JRC 1306 and opt to continue under this.

The option exercised above for continuance in CPF is final and irrecoverable.

Signature _____
Name in full – Vimla Nanda
CPF Account No. JRC 1306
Present Designation- T.G.T.
Place of present posting-
K.V.-2, Jaipur

Dated: 26.9.88"

From perusal of this option form, it is evident that option so exercised shall be final and irrecoverable. The facts remain that thereafter the applicant has been continuously subscribing to the CPF scheme. Even the applicant was also allotted new account number pursuant to the scheme as floated vide OM dated 9.1.88. From the material placed on record, it is also evident that the applicant has also claimed benefit of income tax as an optee of CPF scheme. Admittedly, the applicant has also retired from service of the KVS and it is not the case of the applicant that she has not received the CPF amount on account of her retirement.

7. The option in this case was exercised on 26.9.1988 and the OA has been filed by the applicant on 13.12.2006 after a lapse of about 18 years. Thus, according to me, such a stale claim of the

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applicant cannot be entertained at this stage especially when the applicant has not given any satisfactory explanation for the delay in filing such belated claim.

9. The matter on this point is no longer res-integra and it is fully covered by the decision of the Apex Court in the case of Union of India and Others vs. Shankar, 2002 SCC (L&S) 1039. That was a case where the respondent before the Apex Court was railway employee who like the applicant gave option for provident fund and not for the pension fund. The respondent before the Apex Court sought voluntary retirement from service on 4.12.1976 and on his retirement he was paid the provident fund. In the year 1995, the respondent before the Apex Court filed OA before the Central Administrative Tribunal, Jabalpur praying for cancellation of his option for provident fund and for direction to the appellant to pay pension under the Pension Fund Scheme. The said OA was allowed. The matter was carried to the Apex Court, the Apex Court held that such belated petition filed after 18 years ought not to have been entertained by the CAT. Moreover, the respondent has opted and accepted the provident fund and it was not permissible for the respondent to move the Tribunal for cancellation of option. According to me, the ratio as laid down by the Apex Court is wholly attracted in the instant case. The applicant has exercised option for CPF scheme in the year 1988. Even if for arguments sake it is assumed that the applicant has subsequently made an application for withdrawal of such option, although, as already noticed above, such contention cannot be accepted, It was open for the

applicant to agitate the matter by filing OA before this Tribunal at the relevant time.

10. Facts remain that the applicant did not choose to avail the remedy by way of filing the OA within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985, ^{rather} ~~that~~ he acquiesced by making contribution to CPF scheme. Not only that the applicant has also claimed benefit of CPF in the income tax. It appears that the applicant has also received retiral benefits as admissible to her as an optee of the CPF scheme.

11. In view of what has been stated above, I am of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.



(M.L. CHAUHAN)

Judl. Member

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