

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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ORDER SHEET

ORDERS OF THE TRIBUNAL

27.09.2011

MA 20/2011(OA No. 319/2008)

None present for applicant.

Mr. Mukesh Agarwal, Counsel for respondents nos. 1 & 2.

None present for respondent no. 3 & 4.

Put up on 13.10.2011.

Anil Kumar  
(Anil Kumar)  
Member (A)

ahq

~~Mr.~~

13-10-2011

Mr. Indresh Sharma, Counsel for applicant

Mr. Mukesh Agarwal, Counsel for respondents nos. 1 & 2.

Mr. Kapil Prakash Mathur, Counsel for respondents nos. 3 & 4.

Heard. The OA is disposed of by a  
separate order

Anil Kumar  
(Anil Kumar)  
M(A)

~~Mr.~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH,  
JAIPUR.

*Jaipur, the 13<sup>th</sup> day of October, 2011*

**ORIGINAL APPLICATION No. 319/2008**

**With**

**MISC. APPLICATION NO. 20/2011**

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

K.C. Sharma son of Shri Bhuvaneswar Lal Sharma, aged about 58 years, resident of 423, HBU Nagar Ext. Pushkar Road, Ajmer. Presently working as Reader at Regional Institute of Education, Ajmer.

... Applicant

(By Advocate : Mr. Indresh Sharma)

Versus

1. Union of India through Secretary, Human Resource Department, New Delhi.
2. The Secretary (Personnel), Public Grievance & Pension Department, Union of India, New Delhi.
3. The Secretary, National Council of Education and Research and Training (NCERT), Sri Aurobindo Marg, New Delhi.
4. The Principal, Regional Institute of Education, Capt. D.P. Choudhary Marg, Ajmer.

... Respondents

(By Advocates : Mr. Mukesh Agarwal- Respondents nos. 1 & 2  
Mr. Kail Prakash Mathur -Respondent no. 3&4

**ORDER (ORAL)**

This OA was dismissed in default for non prosecution on the part of the applicant on 21.12.2010. The applicant has filed an MA No. 20/2011 for restoration of the OA. I am satisfied with the reasons given in the MA. Hence the OA is restored to

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its original number. The MA No. 20/2011 stands disposed of accordingly.

2. The applicant has filed the present OA thereby praying that the respondents may kindly be directed to allow him to switch over from CPF Scheme to GPF cum family pension Scheme and further grant all the consequential benefits related to the GPF Scheme.

3. Brief facts of the case are that the applicant was initially appointed as Lecturer (Physics) at Regional Institute of Education (NCERT), Ajmer. That the National Council of Educational Research and Training (NCERT) on 27.07.1987 (Annexure A/2) asked for change of option from the employees of the council from Contributory Provident Fund (CPF) Scheme to the General Provident Fund (GPF) Scheme as a follow up of implementation of the recommendation of the IV Central Pay Commission. The last date for giving the option was 30.09.1987. The applicant initially opted to continue under the CPF Scheme vide his option dated 31.08.1987 but subsequently according to the applicant, he changed his option and opted for GPF cum pension scheme on 25.09.1987 that is within the time limit prescribed for giving option but the respondents have not allowed to change his option from CPF Scheme to GPF cum pension scheme. Aggrieved by the action of the respondents, this OA has been filed with the request that the respondents may be directed to allow switching over from

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CPF Scheme to GPF cum pension Scheme and further grant of all consequential benefits related to the GPF Scheme.

4. The respondents have filed their reply. They have raised the preliminary objection that the application filed by the applicant is hopelessly time barred. There is a delay of about 20 years as option of switching over from CPF to GPF was asked in the year 1987 and the cut off date for the same is fixed as 30.09.1987 vide order dated 27.07.1987 (Annexure A/2). Therefore, this OA is not maintainable as time barred. The respondents have further stated that the applicant has submitted misleading facts by stating that on 25.09.1987, he submitted his revised option. As per record available with the answering respondents, applicant has never submitted any revised option on 25.09.1987, as contended by him. The respondents have further stated that the applicant has submitted Annexure A/3, which is a fabricated document to mislead the Hon'ble Court. The applicant has never submitted any revised form to respondent no. 3 nor has he ever made any mention in his representations that he has submitted any revised option for GPF Scheme. In this regard, the respondents received representation submitted by the applicant on 12.04.1999 wherein he has stated that he is a subscriber of CPF in the NCERT, which makes it clear that the theory of revised option is an after thought as the applicant has never mentioned an iota of his revised option form in any of the representations which he given from time to time.

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5. The respondents have also stated that the controversy of employees right to seek change from CPF to GPF scheme after the cut off date has been conclusively settled in the **Krishan Kumar case in 1990(4) SCC 207**, wherein the Constitutional Bench of the Hon'ble Supreme court has finally settled the issue and has specifically held that the CPF holder who did not exercise their option for changing over to Pension Scheme by the cut off date are not entitled to be included in the Pension Scheme. Their right has been forfeited forever. Therefore, even on merit the applicant has no case and the present OA is devoid of merit and therefore, needs to be dismissed with exemplary cost.

6. Heard the learned counsel for the parties and perused the documents on record. The short controversy in this case is whether the applicant has changed his option from CPF to GPF cum pension Scheme before 30.09.1987, which was the cut off date for giving option. Learned counsel for the applicant argued that initially the applicant had opted for CPF Scheme but subsequently on 25.09.1987, he changed his option from CPF to GPF cum Pension Scheme, which is within time prescribed for giving option. He denied the allegations of the respondents that Annexure A/3 of the OA is a fabricated document. He argued that CPF option dated 31.08.1987 was cancelled through the office procedure at RCE Ajmer with proper noting on the same. Any document once submitted and entered in the office diary is an official document which is not accessible to outsiders like the applicant. Therefore, the question of forging

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of the document by the applicant is denied. As regards the question of time barred is concerned, he argued that applicant was giving representations from time to time but he did not hear from the respondents and finally he received communication from the respondents dated 10.12.2007 and, therefore, this OA is within limitation.

7. Learned counsel for the respondents reiterated their stand which they have taken in their reply that they have not received any revised option from the applicant, as stated by him. The applicant has never submitted any revised option form to the respondents. Even in the representation submitted by the applicant, he had never mentioned about his revised option form. He again submitted that the present OA is hopelessly time barred, filed almost after 20 years from the cut off date of giving option, which was fixed as 30.09.1987.

8. Having heard the rival submissions of the parties and after careful perusal of the documents on record, it is clear that the scheme to change from CPF to GPF scheme was introduced vide letter dated 27.07.1987 (Annexure A/2) and last date of giving option was 30.09.1987 while the present OA has been filed in the year 2008 that is almost after 20 years of introduction of this Scheme. The applicant has not been able to give any specific explanation for this inordinate delay.

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9. The Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011] held that:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

**"21. Limitation.-**

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as it mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

The application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or as the case may be, clause (b) of sub-section (1) or within a period of six

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months from the said date, whichever period expires later.

(3) Notwithstanding anything, contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) of as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

10 The Hon'ble Supreme Court in the case of **Union of India & Others vs. M.K. Sarkar**, 2010 (1) SCC (L&S) 1126 in Para no. 15 of the judgment has held as under:-

"15. ....The issue of limitation or delay and latches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and latches."

11. Hon'ble Supreme Court in the case of **E.Parmasivan & Others vs. Union of India & Others**, 2005 SCC (L&S) 125 has held as under:-

"3. In the circumstances of the case the Tribunal, in our view, was right in holding that the original application filed by the petitioner was barred by limitation and hence

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no relief as claimed by them could be granted to them. Thus the petition being devoid of merit is dismissed."

The ratio laid down by the Hon'ble Supreme court in the above cases is squarely applicable in this case. Therefore, I am of the opinion that this OA is hopelessly time barred and on this count alone it deserves to be dismissed.

12. According to the applicant, initially he opted to continue in the CPF Scheme. Subsequently on 25.09.1987, he revised his option and this revised option was also recorded on the same option form which he used for giving his option to continue in the CPF Scheme (Annexure A/3). Here is the entry on the same form under the signature of the applicant, which is as under:-

Dt.25.9.1987

Proforma cancelled as Dr. K.C. Sharma has desired opting out of CPF in favour of GPF cum family pension vide above OM. "

The bare perusal of this endorsement shows that it is not a request form for change from CPF Scheme to GPF cum Pension Scheme but it is in the form of an order. Moreover, the respondents have denied that they have received this communication from the applicant. The respondents are the custodian of the official record maintained by them. The applicant has not been able to prove if he had given the option to change CPF Scheme to GPF cum Pension Scheme prior to the date of close of option i.e. 31.09.1987 then why the respondents would not act on his revised option while they

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have done so in the case of others who have opted for GPF and Pension Scheme before the closing date that is 30.09.1987. In view of this categorical submission made by the respondents that the applicant has not submitted any revised form to respondent no. 3 nor he has ever mentioned in his representations that he has submitted revised option for his GPF cum pension Scheme. The respondents have categorically stated that Annexure A/3 is a fabricated document. Therefore, based on the above facts and material available on record, in my opinion, the applicant has not made out any case for interference by this Tribunal.

13. Even on merit, the OA does not succeed and, therefore, it is dismissed with no order as to costs.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

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