

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 20<sup>th</sup> day of August, 2010

Original Application No. 319/2010

CORAM:

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

Dr. Harish Chand Jain  
s/o Late Shri B.L.Jain,  
r/o 264, Saket Colony,  
Vaishali Nagar, Ajmer,  
retired from Regional Institute  
of Education, Ajmer.

... Applicant

(By Advocate: Shri Sunil Kumar Singh)

Versus

1. National Council of Educational  
Research and Training;  
Sri Auranindo Marg,  
New Delhi- 110016  
through its Secretary.
2. Principal,  
Regional Institute of Education,  
Pushkar Road,  
Ajmer.

... Respondents

(By Advocate: ....)

ORDER (ORAL)

This is third round of litigation. Earlier, the applicant has filed  
OA No.457/2008, which was permitted to be withdrawn vide order

dated 13<sup>th</sup> January, 2010 with liberty reserved to the applicant to file substantive OA for the same cause of action. Thereafter the applicant filed OA No.99/2010 thereby praying that respondents may be directed to grant GPF and pension after taking into consideration past services of the applicant in NCERT w.e.f. 23.10.69 as they have done in the case of Dr. R.S.Kashyap and Dr. N.C.Dhotia. The said OA was also disposed of vide order dated 23<sup>rd</sup> February, 2010 as representation of the applicant dated 18.1.2010 was pending before the Secretary, National Council of Educational Research & Training (NCERT), New Delhi and direction was given to respondent No.1 to decide representation of the applicant within a period of three months. It was also made clear in the order that the direction so given by this Tribunal may not be construed that this Tribunal has condoned the delay and question of delay and laches can be considered while considering case of the applicant. The respondents instead of rejecting the representation on the ground of delay and laches decided the same on merit vide impugned order dated 13/17.5.2010 (Ann.A/2). It is this order which is under challenge in this OA and the applicant has sought the following reliefs:-

- (i) That the respondent may be directed to grant the GPF and Pension after taking into consideration the past services of the applicant in the NCERT w.e.f 23.10.1969 as they have done in the case of Dr. R.S.Kashyap and N.C.Dhotia.
- (ii) Any other relief which may this Hon'ble Tribunal may deem fit."

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2. Alongwith this OA, the applicant has also filed a Misc. Applicant for condonation of delay. As can be seen from this MA, the applicant has pleaded that the applicant was appointed as Professor in the year 2001 and retired as Principal on 28.2.2007. It is further stated that the first OA was filed on 3.11.2008 and the second OA was filed on 5.2.2010. In para-2 of the MA, it has been pleaded that although the cause of action arose from October, 2001 and still continuing till the retirement of the applicant. It is also pleaded in the MA that the applicant has given application for the benefit of Pension cum GPF on 7.10.2003 and is continuously pursuing the matter till today and further the aforesaid matter has not been disposed of with some ulterior motive and malice till 17.5.2010. Therefore, the matter is required to be heard and the delay may be condoned.

3. Now, few facts which are relevant for disposal of this case may be stated. The applicant initially joined the service of the respondents on 23.10.1969 as Lecturer in Physics and thereafter promoted as Reader w.e.f. 12.2.1984 and thereafter in pursuance to the CAS the applicant became eligible for financial benefits in the Professor scale on 27.7.1998. The respondents issued an advertisement No.144 in the Employment News dated 18-24.11.2000 for various posts including the post of Professor in Science Education. As can be seen from clause (e) under the heading 'General Information' of the said advertisement, the persons who were employed in Govt./Semi-Govt./Autonomous Organisation were also made eligible for consideration with the rider that they will

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submit their application through proper channel. Subsequently, vide

Memorandum dated April 16,2001 (Ann.A/5) the applicant was given offer of appointment on the post of Professor in Science Education, Regional Institute of Education (RIE), Ajmer. As can be seen from Para-4 of the terms and conditions it has been specifically stated that the other terms and conditions of service will be governed by the relevant rules and orders issue by the Council from time to time. It may be stated that offer of appointment on the aforesaid post of Professor was given to the applicant being Reader in Physics at RIE, Ajmer. According to the applicant, this being a fresh appointment, as such, the applicant was governed by the CCS (Pension) Rules and he cannot be treated as in-service candidates/employee of the NCERT and thus, in terms of this fresh appointment to the post of Professor, the option exercised by the applicant to continue with Contributory Pension Fund (CPF) scheme is of no consequence and service rendered by the applicant since 23.10.1969 under NCERT till his fresh selection as Professor in the year 2001 when he was under the Pension Scheme should be counted as qualifying service for the purpose of pension. It may be further stated here that the applicant has retired from service on 28.2.2007 (A/N). From the material placed on record, it is evident that for the first time the applicant made a representation dated 7.10.2003 (Ann.A/10). In this representation, the applicant has stated that no option has been given to him after his appointment as Professor w.e.f. 17.4.2001 whether to retain GPF or CPF. It was further stated that he wants to exercise option for GPF scheme. At this stage, it will

be relevant to quote representation dated 7.10.2003 (Ann.A/10) which thus reads:-

"With reference to NCERT letter No. F.1-5/2000-NCERT/RIEFA/1067 dated April 16, 2001 I was selected for the post of Professor in Science Education. I assumed the charge of the above said post on 17.4.2001. However, I have not yet been asked the option for GPF or CPF."

I wish to inform you that I want to exercise the option for GPF which may kindly be allowed. At present i.e. before joining the post of Professor, I am having CPF....."

It is case of the applicant that he was never informed about rejection of the said letter. Subsequently, he also filed a representation dated 18.1.2010 and this Tribunal vide its order dated 23.2.2010 passed in OA No.99/2010 directed the respondents to decide the same. As already stated above, the respondents have decided the aforesaid representation on merit vide impugned order dated 13/17.5.2010. Vide the above order, this Tribunal has also given liberty to respondent No.1 to decide the same on the ground of limitation, delay and laches. At this stage, it will be useful to quote aforesaid order dated 13/17-5.2010 in extenso, which thus reads:-

"Subject: Allotment of GPF and determination of pension to Dr. H.C.Jain, Rtd. Prof., RIE, Ajmer.

Whereas a petition (OA No.99/2010) was filed before the Hon'ble CAT, Jaipur Bench by Dr. H.C.Jain retired Professor, RIE, Ajmer.

Whereas the Hon'ble CAT, Jaipur Bench vide order dated 23.2.2010 has given direction to decide and to pass appropriate order on the representation dated 18.01.2010 of Dr. H.C.Jain, within a period of three months from the date of receipt of a copy of the order of Hon'ble CAT by Respondent No-1.

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Whereas Dr. Jain vide his application dated 18.01.2010 had requested to

- i) Allot him GPF number.
- ii) To determine his pension taking into consideration his past service in NCERT w.e.f. 23.10.69 as has been done in the cases of Dr. R.S.Kashyap and Dr. N.C.Dhotia etc.

Whereas so far point No. (i) is concerned it is stated that Dr. H.C.Jain vide his option dated 18.9.87 opted to continue under the Contributory Provident Fund Scheme. Had he not exercised this specific option, he would have been deemed to have come over to the Pension Scheme.

Whereas when the individuals in writing have opted to remain in CPF, in response to the Council's Circular No.F.15-4/87-EC dated 27.07.1987, they have been continued in the CPF scheme. As per clause 3.6 of circular, option once exercised shall be final and therefore their cases can not be re-opened and given the benefit of GPF/Pension Scheme.

Whereas so far point No.(ii) above is concerned as per available records it may be stated that both of them (Dr. R.S.Kashyap and Dr. N.C.Dhotia) were covered under pension scheme in their previous departments and continued in the pensionary scheme in NCERT. Since they were fresh appointed in NCERT, they were placed in the GPF Scheme.

Dr. H.C.Jain was borne on the establishment of NCERT itself from the start whereas Dr. Dhotia and Dr. Kashyap joined NCERT directly as Professor and they were new entrants. There was no choice available to new entrants for option to CPF/GPF and it was compulsory for all new recruits to come under GPF-Pension Scheme. The cases of Dr. Kashyap and Dr. Dhotia are not identical at all with the case of Dr. H.C.Jain, therefore, no parity between their position can be drawn.

Whereas Dr. H.C.Jain's case was referred to MHRD vide letter of even number dated 02.03.2007 for seeking confirmation on the decision taken by the Council.

MHRD vide letter No.1-6/2007/Sch-4 dated 21.03.2007 confirmed that the decision of NCERT for not allowing Prof. Jain to switch over from CPF to GPF scheme is upheld. This decision of MHRD was also conveyed to Dr. Jain vide letter dated 20.04.2007.

Therefore, the request of Dr. H.C.Jain to switch over from CPF to GPF/Pension Scheme at this juncture is not justified and cannot be acceded to.

This issues with the approval of Competent Authority.

Sd/-  
(U.K.Patil)  
Under Secretary"

As can be seen from the order as extracted above, the applicant has raised two contentions, that he may be allotted GPF number and that his case for pensionary benefits may be determined taking into consideration his past service w.e.f. 23.10.1969 as has been done in the case of Dr. R.S.Kashyap and Dr. N.C.Dhotia. The respondent No.1 has categorically held that the applicant has exercised option dated 18.9.1987 to continue under CPF scheme. Had he not exercised option he would have been deemed to have come over to the Pension Scheme. Thus, according to the respondents in terms of the Council Circular No. F.15-4/87-EC dated 27.7.1987 the individual who had opted to remain under CPF scheme has to be continued in the CPF scheme. From the impugned order it is also clear that in terms of clause 3.6 of circular dated 27.7.1987 option once exercised shall be final. Thus, in view of specific provisions contained in the scheme, I see no infirmity in the action of the respondents. The applicant has also not disputed regarding exercise of option for CPF scheme in terms of the circular dated 27.7.1987 and such option was never revoked till his retirement on 28.2.2007, as such, the applicant cannot be permitted to raise such grievance at this belated stage by filing OA subsequent to his retirement. Facts remain that the applicant retired as employee governed by the CPF scheme. His relation with the department came to an end with the retirement and after receipt of the payment under the CPF scheme, thus, such request for switching over to the Pension Scheme and to count the entire service for the

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purpose of pensionary benefit cannot be accepted in view of the law laid down by the Apex Court. At this stage, I wish to reproduce para-4 of the judgment of the Apex Court in the case of V.K.Ramamurthy vs Union of India and Ors., AIR 1996 SC 2658 whereby the Apex Court has categorically held that Pension Scheme and Provident Schemes are structurally different and if once despite the opportunity the retiree has not exercised his option to switch over to the pension scheme, he cannot be permitted to opt for pension scheme after his retirement. Para-4, thus reads:-

“4. In State of Rajasthan vs. Rajasthan Pensioner Samaj, 1992 Supp (2) SCC 141, ... this Court also came to hold that the Contributory Provident Fund retirees from a different class from those who had opted for Pension Scheme according to the decision in Krishnendu Kumar's case (AIR 1990 SC 1782) and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the Contributory Provident Fund Scheme retirees are not entitled to the benefits granted to the Pension Retirees. In yet another case of All India Reserve Bank Retired Officers Association v. Union of India, 1992 Supp (1) SCC... the Court was also considering the case of the Pension Scheme and Contributory Provident Fund Scheme and held that in the case of an employee governed by the Contributory Provident Fund Scheme his relations 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 relations with the employer merely under a change but do not snap altogether. It is for this reason in case of pensioners it is necessary to revise 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 that is not the case of employees 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 to the Contributory Provident Fund Scheme has been rightly emphasized by this Court in Krishena Kumar's case."

Thus, in view of the law laid down by the Apex Court, the applicant is not entitled to any relief.

4. That apart, the applicant is also not entitled to any relief yet on another ground. As can be seen from the order dated 13/17.5.2010, relevant portion of which has been reproduced above, request of the applicant for switching over from CPF to GPF scheme was also referred to the Ministry of Human Resource Development vide letter dated 21.3.2007 but request of the applicant was rejected and decision of the Ministry was conveyed to the applicant vide letter dated 20.4.2007. The applicant has not challenged the validity of the order dated 20.4.2007 in this OA, as such, the applicant cannot be granted relief on this ground also.

5. It may be relevant to state here that applicant in his MA No.197/2010 for condonation of delay is consciously silent about letter dated 20.4.2007. It is specifically stated that his representation made on 7.10.2003 was not disposed of till 17.5.2010 and therefore, it is a continuing cause. In view of this, the applicant is guilty of suppressing the material fact from this Tribunal by concealing the fact of rejection of his representation vide letter dated 20.4.2007. Thus, the OA is also liable to be dismissed on this ground without hearing the applicant on merit.

6. The present OA is also hopelessly time barred. The applicant has exercised option to continue under CPF Scheme vide his option dated 18.9.1987. The first representation stated to have been made

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by the applicant in the year 2003 after a period of about 16 years.

The applicant retired from service from 28.2.2007, still the applicant did not raise any grievance by filing OA before this Tribunal. In case delayed representation of the applicant was not considered by the respondents in that eventuality, in terms of the provisions contained in Section 21 of the Administrative Tribunals Act, such application has to be made within one year when the cause of action accrued and in case the representation is made and the same has not been decided within six months, the same shall be deemed to have been rejected and the OA has to be filed within one year thereafter.

Admittedly, the applicant has not filed OA within the time prescribed under Section 21 of the Administrative Tribunals Act. The applicant has not given any explanation whatsoever, why he has not made any representation within the time prescribed under Section 21 of the Administrative Tribunal Act, in the Misc. Application for condonation of delay. The applicant has only mentioned that cause of action arose only in October, 2001 and he filed representation on 7.10.2003 which was not disposed of till 17.5.2010. Since the applicant has prayed that his entire service, w.e.f. 23.10.1969 till his retirement may be counted under Pension Scheme, as such, it cannot be said that cause of action arose only in the year 2001. Even for arguments sake it is assumed that cause of action arose in the year 2001, the applicant has failed to show that on account of his so called fresh appointment on the post of Professor, the respondents were required to give fresh option for the employee/new entrant to either opt for CPF Scheme or Pension

Scheme. From the findings recorded by the respondents in the order dated 13/17.5.2010 no such choice was available and it was compulsory for new entrants to come under the GPF-Pension Scheme. In other words, in terms of Council letter dated 27.7.1987 all CPF beneficiary who were in service prior to enforcement of the scheme and still in service were given option to come over to the Pension Scheme. Judicial notice can be taken to the fact that change over option of the employees from CPF scheme to Pension Scheme was given on the recommendation of the 4<sup>th</sup> Central Pay Commission whereby it was recommended that all CPF beneficiary in service on January 1, 1986 should be deemed to have come over to Pension Scheme on that date unless specifically opted out to come to CPF scheme. Such recommendation of the Pay Commission was considered and accepted by the Government and all the CPF beneficiaries who were in service on January 1, 1986 and were still in service on the date of issue of the order were deemed to have come over to the Pension Scheme. It was further stipulated in the order that employees of the category mentioned above, will however, have option to continue under the CPF scheme, if they so desire. The option will have to be exercised within six months in the prescribed format if the employee wishes to continue under CPF scheme. If no option is received by the Head of office by that date, the employee will be deemed to have come over to the Pension Scheme. It was further mentioned in the order that option once exercised shall be final. In terms of the aforesaid recommendations given by the 4<sup>th</sup> Pay Commission and accepted

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by the Govt., the Council has also issued circular on the same line vide order dated 27.7.1987. Admittedly, the applicant has exercised option to continue under the CPF scheme. Thus, all the employees who entered into service after January 1, 1986 will be governed by the Pension Scheme including CPF beneficiaries appointed prior to January 1, 1986 unless they specifically opted for continuation under the CPF Scheme. Thus, contention of the applicant that respondents should have given afresh option when he was appointed as Professor as direct recruit either to opt for CPF or GPF-Pension Scheme was not required at all as rightly held by the respondents.

7. The matter can also be looked into from another angle. The applicant is claiming pensionary benefit which has to be granted in terms of the provisions contained in CCS (Pension) Rules, 1972. It is not a case of the applicant that CCS (Pension) Rules, 1972 are not applicable to the employees working in the NCERT as the same have also been adopted by the NCERT. If one has regard to Rule-2 of CCS (Pension) Rules, 1972, these rules are not applicable to persons entitled to the benefit of CPF scheme. Admittedly, the applicant was contributing towards CPF scheme till his retirement. The Hon'ble Apex Court in the case of V.K.Ramamurthy (supra) has held that the Provident Fund and Pension Schemes are structurally different and cannot be made applicable to the employees governed by the CPF scheme. Thus, contention of the applicant that service rendered by him from the very inception should be counted for the purpose of pensionary benefits cannot be accepted.

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8. The contention raised by the applicant that his case is similar to that of Dr. R.S.Kashyap and Dr. D.C.Dhotia to whom the benefit under the Pension Scheme has been extended is wholly misconceived and deserved our right rejection in the light of the observation made in the letter dated 13/17.5.2010 as reproduced above. As can be seen from this order both Dr. R.S.Kashyap and Dr. N.C.Dhotia were covered under the Pension Scheme in their previous department and thus has to be continued under Pension Scheme in NCERT as they were fresh appointee in NCERT. Thus case of the applicant cannot be equated to these persons as admittedly the applicant was optee of CPF scheme and not the Pension Scheme.

9. Yet for another reason, the applicant is not entitled to any relief on account of delay and laches and in view of the law laid down by the Apex Court in the case of Union of India vs. Shankar, 2002 SCC (L&S) 1039. That was a case where the respondent before the Apex Court made representation after a lapse of 18 years in making claim for pension under Pension Fund Scheme after he voluntarily opted and accepted the provident fund. The Apex Court held that respondent who had given voluntarily option in the year 1958 for having Provident Fund under the State Railway Provident Fund and had voluntarily retired from service and remained silent. The OA was filed before the Central Administrative Tribunal after a lapse of 18 years for change of option which was already given effect to. The Apex Court held that the Tribunal should not have entertained such belated claim. The Apex Court further held that the

respondent having opted and accepted the Provident Fund it was not open to him to move for cancellation of option. The ratio as laid down by the Apex Court is squarely applicable in the facts and circumstances of this case. In this case also, the applicant voluntarily exercised option for the CPF Scheme on 18.9.1987. He filed OA before the Tribunal in the year 2008 after a period of about 21 years, as such, such belated claim cannot be accepted and the applicant cannot be permitted to argue that the benefit received under the CPF Scheme being CPF employee should be treated as qualifying service for pensionary benefits when the Pension Rules are not applicable to the persons entitled to the benefit of CPF scheme in terms of Rule-2 of CCS (Pension) Rules, 1972, which rules has been made applicable to the employees of the NCERT as per OM dated 24.1.1972 whereby Para-3 of the said circular stipulates that Pension Rules of Council will be same as the Pension Rules of the Central Government as contained in the Civil Servant Regulations and the Liberalised Pension Rules of the Government of India. In view of the fact that the Pension Rules of the Government of India have to be followed by the Council in toto no separate rule for the employees of the Council were proposed to be provided. It has also been made clear in the said OM that all amendments to the Pension Rules, GPF Rules and CPF Rules of the Govt. of India will become automatically applicable to the employees of the Council w.e.f. the same date. Thus, in the light of the statutory provisions contained in Rule 2(d) of the CCS (Pension) Rules, 1972, these rules cannot be made applicable to the beneficiaries of CPF scheme.

Thus, the service rendered by the applicant in NCERT w.e.f. 23.10.1969 till appointment of the applicant as Professor on April 17, 2001 cannot be counted for the purpose of pensionary benefits under the CCS (Pension Rules, 1972, even if for argument sake it is presumed that the applicant has automatically switched over to the pension rules on his first appointment as Professor w.e.f. 17.4.2001. Even in that contingency, in terms of Pension Rules, the applicant can be granted pension after rendering 10 years of qualifying service. Admittedly, the applicant retired on superannuation on 28.2.2007 after putting less than 6 years of service, as such, even on this parity, the applicant is not entitled to pensionary benefits.

10. At this stage, it will also be relevant to quote decision of the Apex Court in the case of Union of India vs. M.K.Sarkar, JT 2009 (15), SC 70. That was a case where the respondent before the Apex Court joined the railway service on 10.2.1947. He was subscriber to Contributory Provident Fund Scheme. The Railways introduced the pension scheme vide Railway Board's letter dated 16.1.1957. Under the said scheme, those who entered railway service on or after 16.11.1957 were automatically governed by the pension scheme. Those employees who were in service as on 1.4.1957 and those who joined between 1.4.1957 and 16.11.1957 were given an option to switch over to Pension Scheme instead of continuing under the Contributory Provident Fund Scheme. Those who did not opt for the Pension Scheme were given further opportunities to exercise options on different occasions and lastly it was extended upto 31.12.1978. The respondent though aware of the above scheme and options

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given on eight occasion between 1957 to 1974, consciously did not opt for the pension scheme and continued with CPF scheme. Ultimately the respondent while serving as Controller of Stores, took voluntary retirement w.e.f. 15.10.1976. After more than 22 years of his retirement and after receiving his dues under the Provident Fund Scheme, the respondent made a representation dated 8.10.1998, requesting that he may be extended the benefit of the pension scheme. It was stated that he was willing to refund the amount received under the Provident Fund Scheme but the said request was not accepted and the same was rejected being belated request. Ultimately, he has filed OA before the Central Administrative Tribunal and the Tribunal vide its order dated 11.2.2004 directed the appellants to permit the respondent to opt for pension scheme and also inform the respondent the amount that was required to be refunded in case he exercises the option. The Writ Petition filed before the High Court was also dismissed. The Hon'ble Apex Court held that when the scheme extending the benefit of switch over stipulate that benefit will be available only to those who exercise option within the specified time, the option obviously be exercised within such time. The option scheme made it clear that no option could be exercised after the last date. The respondent before the Apex Court chose not to exercise option and continued to remain under the Contributory Provident Fund scheme, and more importantly, received the entire PF amount on his retirement. The contention of the respondents that no intimation regarding option was given to him, was rejected by the Apex Court. It was observed

that it was in the year 1996 when the respondent learnt that some others who had retired in and around 1973 to 1976 had been permitted to exercise the option in 1993-94, on the ground that they had not been notified about the option, he decided to take a chance and gave a representation seeking an option to switch over to pension scheme. The Apex Court held that having enjoyed the benefits and income from the provident fund amount for more than 22 years, the respondent could not seek switch over to Pension Scheme which would result in respondent getting in addition to the PF account already received, a large amount as arrears of pension for 22 years which will be much more than the provident fund amount that will have to be refunded in the event of switch over and also monthly pension for the rest of his life. If such a request for such belated exercise of option is accepted, the effect would be to permit the respondent to secure the double benefit of both provident fund scheme and pension scheme, which is unjust and impermissible. The validity period of the option to switch over to pension scheme expired on 31.12.1978 and there was no recurring or continuing cause of action. The respondent's representation dated 8.10.1998 seeking option to shift to pension scheme w.e.f. 1976 ought to have been straight away rejected as barred by limitation/delay and laches.

11. In the present case also, the validity period of exercising option to switch over had already expired in the year 1987 and there was no recurring or continuing cause of action. As such, in the light of the observations made by the Hon'ble Apex Court in the

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case of M.K.Sarkar (supra), the contention of the applicant that it is continuing cause of action cannot be accepted and the OA is also required to be dismissed on this ground. Simply because pursuant to direction given by this Tribunal the respondents decided representation in the year 2010 will not confer a fresh cause of action. At this stage, it will be useful to quote para 9 and 10 of the judgment in the case of M.K.Sarkar (supra), which thus reads:-

9. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C.Jacob vs. Director of Geology and Mining and Anr.- 2009 (10) SCC 115.

"The courts/tribunals proceed on the assumption that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee filed an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunal/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches 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 compliances 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 laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect (emphasis supplied).

10. Even on merits, the application has to fail. In *Krishena Kumar vs. Union of India- 1990 (4) SCC 207*, a Constitution Bench of this Court considering the options given to the Railway employees to shift to pension scheme, held that prescription of cut off dates while giving each option was not arbitrary or lacking in nexus. This Court also held that provident fund retirees who failed to exercise option within the time were not entitled to be included in the pension scheme on any ground of parity. Therefore, the respondent who did not exercise the option available when he retired in 1976, was not entitled to seek an opportunity to exercise option to shift to the pension scheme, after the expiry of the validity period for option scheme, that too in the year 1998 after 22 years."

The ratio as laid down by the Apex Court, as reproduced above, is also attracted in the case of the applicant and the issue of limitation and delay has to be considered with reference to original cause of action and not with reference to the date the order

pursuant to court direction has been passed by the respondents (Ann.A/2).

12. Thus, for the foregoing reasons, the applicant is not entitled to any relief. Accordingly MA as well as OA is dismissed with no order as to costs.



(M.L.CHAUHAN)  
Judl. Member

R/