

**CENTRAL ADMINISTRATIVE
TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION No. 613/2012

Order reserved on : 23.05.2016

Date of order : 02.06.2016

Coram

Hon'ble Ms. Meenakshi Hooja, Member (A)

Dr. Lalit Kishore S/o Late Sh. Chaman Lal aged about 65 years, previously Assistant Commissioner, Kendriya Vidyalaya Sangathan, residence of 68, Jai Jawan Colony, JNL Marg, Jaipur.

.....Applicant

(By Advocate Mr. Amit Mathur)

VERSUS

1. Kendriya Vidyalaya Sangathan through the Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi 1100016

.....Respondents

(By Advocate Mr. Hawa Singh)

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, against the order dated 29.08.2011 (Annexure A/1) whereby the Respondents had not declared the status of the applicant under Pension Rules and had decided the representation of the applicant in total disregard of CCS (Pension) Rules and

ORIGINAL APPLICATION No. 613/2012

the Judgements of this Tribunal dated 02.12.2009 and 12.07.2011 and thereby, seeking the following reliefs:

- (a) By an appropriate order or direction the impugned order Annexure A/1 dated 29.08.2011 may kindly be declared as null and void and may kindly be quashed and set aside and further the respondents may be directed to provide pension and pensionary benefits to the applicant from the date of his voluntary retirement.
- (b) By an appropriate order or direction the respondents be directed to pass appropriate order treating the applicant as under the Pension Scheme as per CCS Pension Rules, 1972 read with Government of India order dated 01.05.1987 and KVS order dated 01.09.1988 and pay all pension and pensioner benefits from 2001 with all arrears and interest thereof including the benefits of gratuity after voluntary retirement and leave encashment.
- (c) Any other appropriate order or direction which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly also be passed in favour of the applicant.
- (d) Cost of the application may kindly be awarded in favour of the applicant.

2. This OA was initially heard on 26.04.2016 and reserved for orders but was listed for being spoken to on 19.05.2016, 20.05.2016 and 23.05.2016 in order to seek certain clarifications regarding the rules, and after the clarifications were made by the counsels for both the parties, it was thereafter reserved for orders. When the matter came up for hearing and consideration, Id.counsel for the applicant submitted, at the outset, that the applicant has sought relief in this OA on the basis of (i) that the services rendered by him in the Government Moti Lal Nehru School of Sports, Rai, Haryana (in short Haryana Government School) for

the years 1975-83, (which are services rendered prior to his joining the Respondent KVS Organization) are required to be counted as qualifying service for the purpose of grant of pension and (ii) and that as per rules and instructions on the subject, he is entitled to payment of Pension under CCS (Pension) Rules 1972, and contended that they have been denied to him without any justifiable reason.

3. In this context regarding counting of the service, in Haryana Government School, counsel for applicant submitted that the applicant was appointed as Principal KVS in open selection on the basis of advertisement issued by the Respondents, for which he applied through proper channel and after getting NOC from his employer and being relieved as per rules, he joined the service of KVS on 07.06.1983 and was confirmed vide order dated 28th August, 1985 (Annexure A/2) and remained in service of the KVS up to March 2001. However, his request (with reference to his representation dated 16.12.2009) for counting of past services rendered in Moti Lal Nehru School of Sports, Rai Haryana for pensionary benefits has not been acceded to vide order dated 29.08.2011 (Annexure A/1) on the ground that the applicant "has joined the service of KVS on 07.06.1983 and he should have exercised his option for counting of past service within one year from the date of absorption as per provisions contained in the GOI, DOPT OM No. 28/10/84- Pension Unit dated 29.08.1984 or upto 31.12.1990 which was the extended period for all employees In the absence of exercising his option in time his case could not be taken

up with his past previous employer i.e. Government of Haryana for payment of pro-rata pensionary benefits. Therefore, his request for counting of past service could not be acceded to. Hence, the representation dated 16.12.2009 has been fully disposed of".

4. In this regard counsel for applicant contended that in the first place, DOPT OM No. 28/10/84- Pension unit dated 29.08.1984, referred to in the aforesaid order Annexure A/1 (dated 29.08.2011) does not apply to cases of direct recruitment/selection (which is the case of the applicant in joining in KVS) but is only applicable to those cases where services are transferred from one Organization to another and this has been categorically upheld by this Tribunal in TA No. 3/2000 (SB CWP No. 3039/96) Hari Raj Swaroop Sharma Vs Kendriya Vidyalaya Sangthan & Others decided vide order dated 08.01.2001. Counsel for applicant specially referred to Para 5 of the order in support of his contention and contended that the present applicant is similarly placed as the applicant in that OA and therefore, his services rendered in Government School Haryana are required to be counted as qualifying service under Rule 26(2) and then prevailing Rule 30 of the CCS (Pension) Rules 1972.

5. As a back ground to the case, counsel for applicant also explained that earlier the applicant had applied for voluntary retirement, but instead of accepting the same, the Respondents issued order of removal of service vide order dated 20.04.2001. Challenging the said order, the applicant filed OA No.

ORIGINAL APPLICATION No. 613/2012

424/2005 [in which he also prayed for pensionary benefits under CCS (Pension) Rules, 1972] which was decided on 2nd December, 2009 (Annexure A/12). As per the aforesaid order of the Tribunal, the order of removal of service was to be treated as voluntary retirement of the applicant under FR 56 (k)(1). Further on the point whether the applicant is governed by the PF Rules as contended by the Respondents or the applicant is governed by the Pension Rules 1972, the Hon'ble Tribunal did not give any findings, but simply stated that the matter can be examined by the parties independently. It was directed that "for the purpose, if need be, the applicant may raise grievance through a representation before the appropriate authority and the same may be decided in accordance with law within a period of three months. Needless to add that in case the applicant will still be aggrieved by the order to be passed by the Respondents on his representation, it will be permissible to him to challenge the same by filing substantive OA and disposal of this OA will not be construed as res-judicata".

6. Counsel for applicant further submitted that the applicant had filed Contempt Petition No. 25/2010 before this Tribunal for non compliance of order 02.12.2009 (Annexure A/12) in the aforesaid OA No. 424/2005 and the CP was decided on 12.07.2011 (Annexure A/14). In the said order while the order passed by the Respondents on 13.05.2011 treating the order of removal of service as voluntary retirement under Rule 56(k) (1) of FR 56 was noted and taken on record, but it was deemed as part compliance and regarding the question of whether the applicant is governed by PF Rules or

ORIGINAL APPLICATION No. 613/2012

Pension Rules 1972 direction was given to Respondents to fully comply with direction of this Tribunal and pass appropriate order on the representation of the applicant within four weeks from the date of receipt of a copy of this order. Thereafter, the Respondents have decided the representation of the applicant dated 16.12.2009 vide order dated 29.08.2011 (Annexure A/1) in which the request of the applicant for counting past services rendered by him in Moti Lal Nehru School of Sports, Rai, Haryana for pensionary benefits was considered and denied on the ground of not exercising his option as per DOPT OM No. 28/10/1984 of Pension Unit dated 29.08.1984 within one year or up to the extended period of 31.12.1990.

7. In this regard, counsel for applicant further submitted and clarified that the applicant had applied for the post of Principal through proper channel and he was also relieved as per the rules of the School. This is clearly evident from Annexure A/3 certificate dated 14.11.1984 given by his Employer i.e. Principal and Director Moti Lal Nehru School of Sports, Rai, Distt, Sonipat (Haryana) in which it has been clearly stated that this is a Government School under the Sports Department of Haryana. Further as may be seen from Annexure A/5 certificate dated 20.08.1985 the Principal of the Haryana School gave details of the services and pay of the applicant with reference to a query made by the KVS regarding the case of pay protection of the applicant on 10.07.1985 (Annexure A/4) addressed to the applicant and endorsed to the Principal Moti Lal Nehru School i.e. the previous employer of the applicant.

ORIGINAL APPLICATION No. 613/2012

Moreover vide Annexure A/7 all details of the applicant including PF Number were sent by the Haryana School in response to the request made by the applicant vide letter dated 29.11.1989 (Annexure A/6). Further as is clear from Annexure A/10 letter dated 21.03.2001 of the office of Accountant General, Haryana, amount of Rs. 41,987/- his PF Account No. 95335 of the applicant were sent to Senior Accounts Officer KVS of New Delhi vide Bank draft No. 587513 dated 19.12.1991 and the Bank draft was sent with the letter on 02.01.1992. In view of this position counsel for applicant contended that the Respondents were made fully aware of his past services in State Government of Haryana and his services are required to be counted as qualifying service under Rule 26(2) and Rule 30 of CCS(Pension) Rules and again reiterated that DOPT OM No. 28/10/84 of Pension Unit dated 29.08.1984 has no applicability in his case as he is a direct recruit and his case is not a case of transfer from one Organization to another to which the aforesaid OM is applicable.

8. With regard to CPF and Pension counsel for applicant contended that, though the applicant was in CPF scheme after joining KVS in 1983, but later Government of India, Department of Pension issued OM No. 4/1/187-PIC dated 01st May, 1987 by which all CPF beneficiaries in service on January 1, 1986 were deemed to have come over to the Pension scheme on that date unless they specifically opt out to continue under the CPF Scheme. The Board of Governors of KVS adopted this scheme for its employees and orders dated 01.09.1988 (Annexure A/11) were passed by

Respondents in this regard and as the applicant never opted to continue in the CPF Scheme, he was, as matter of right deemed to have come over to the pension scheme.

9. Therefore, counsel for applicant contended that in view of his past services of the applicant in the Government School of Haryana from 1975 -1983, which are required to be counted for qualifying service for pension and as per provisions of Circular dated 01.09.1988 of the Respondents (Annexure A/11), the applicant is entitled to Pension under the CCS (Pension) Rules, 1972 and DOPT OM of 29.08.1984 has no applicability in his case and thus prayed for the OA to be allowed.

10. Per contra, counsel for Respondents submitted that the applicant has not even prayed in the OA for the past services rendered by him in Haryana State Government School to be counted. He further submitted that vide OM DOPT O.M. No. 28/10/84- Pension Unit dated 29.08.1984 option is required to be furnished by all the employees joining an Organization of the Central Government for counting of past service but no such option was given by the applicant within the prescribed time frame of one year or even up to the extended date of 31st Dec, 1990. Counsel for Respondents submitted that the case of the applicant is fully covered by the aforesaid OM. Counsel for Respondents also submitted while referring to Para 4 of the reply (specially page 50 and 51), that the applicant never approached the Respondents KVS with the necessary required documents for counting of his past

ORIGINAL APPLICATION No. 613/2012

services rendered with Government of Haryana and the same cannot be automatically registered by including the same along with the services rendered in the KVS and therefore his past service rendered in Haryana Government School cannot be counted as qualifying services. Additionally, counsel for Respondents also contended that then prevailing Rule 30 of the CCS (Pension) Rules 1972 which is regarding Addition to Qualifying Service in Special Circumstances only applies to cases of superannuation pension, and the applicant retired by VRS and not on superannuation.

11. With regard to the claim of the applicant that he is governed under CCS (Pension) Rules 1972 and not by CPF, Counsel for respondents submitted that the applicant had opted for CPF in the KVS vide his option dated 23 July, 1983 and he was allotted CPF A/c No 3472 and he contributed to CPF until his removal from the service of the KVS w.e.f. 20th April 2001. Counsel for Respondents accepted that the Removal of service was later treated as voluntary retirement under FR 56 (k) (1) of FR 56 w.e.f. 20.04.2001 vide order dated 13.05.2011 (Annexure A/13) in pursuance of the order of the Tribunal dated 2nd December 2009 in OA No. 424/2005 (as upheld by the Hon'ble High Court in DB Civil Writ Petition No.13885/2010 and against which the Petition of Special Leave to appeal was also dismissed by the Hon'ble Supreme Court vide their order dated 29.04.2011).

12. With reference to DOPT OM dated 01.05.1987, adopted in the KVS vide Circular dated 01.09.1988 (Annexure A/11) counsel for

ORIGINAL APPLICATION No. 613/2012

Respondents submitted that as brought out above the applicant initially opted for CPF in KVS and was allotted CPF number, and continued to contribute to CPF till his removal/VRS and he never objected to the same nor asked for any amount to be deducted as GPF contribution on having come over automatically under the Pension Rules. Thus, in this way he became a CPF optee and is not eligible for pension or GPF under CCS (Pension) Rules, 1972 as per OM of 01.09.1988 (Annexure A/11).

13. Counsel for applicant emphasized that actually the applicant never asked for any pension, gratuity etc during his entire tenure, and only when proceedings were initiated for removal from service against him under Article 81(d) of the Education Code and an opportunity to retire voluntarily from 26.04.2001 was given vide letter dated 26.03.2001, the applicant in his application/representation dated 02.04.2011, i.e. just about two weeks before, made his request for voluntary retirement subject to conditions of pension, gratuity, commutation of pension etc. in accordance with CCS(Pension) Rules, 1972.


14. From the aforesaid facts, counsel for Respondents pointed out that the applicant neither bothered to get his past service registered as per due procedure and time frame laid down in the DOPT OM of 29.08.1984, which is very much applicable to the case of the applicant, nor did he even ask for his CPF to be stopped being deduced right from 1988 to 2001 with reference to Circular dated 01.09.1988 of KVS (Annexure A/11) or GPF contribution to

ORIGINAL APPLICATION No. 613/2012

be deducted, and thus being a CPF optee in this way, he is not eligible for pension as per Pension Rules 1972 as they do not apply to CPF beneficiaries and thus prayed for the dismissal of the OA. In support of his contention counsel for Respondents also relied upon the following judgements :

- (i) KVS & Ors. Vs Jaspal Kaur and Ors. decided by the Hon'ble Supreme Court on 06.06.2007 in Case No. Appeal (Civil) 2876 of 2007.
- (ii) T.Krishnamurthy Vs KVS decided on 12.10.2012 by CAT Bench-Ernakulam in OA No. 139/2012.

15. Counsel for applicant while rebutting the arguments reiterated that DOPT O.M. No. 28/10/84- Pension Unit dated 29.08.1984 is not applicable in the case of the applicant because it is not a case of transfer of service as the applicant was appointed to the post of Principal on open selection/Direct Recruitment basis and the applicant had applied through proper channel after seeking due permission. He again reiterated that as per Circular dated 01.09.1988 (Annexure A/11) the applicant never opted for CPF and was therefore automatically covered under Pension Rules. He further submitted that all the information of the status of his school and his service etc. sought for by KVS were duly replied by the Haryana School and the Respondents were informed of the same. Therefore the applicant is entitled to Pension as per Rule 26(2) and the prevailing Rule 30 of CCS (Pension) Rules in view of Circular of KVS dated 01.09.1988 (Annexure A/11) and prayed for



ORIGINAL APPLICATION No. 613/2012

the OA being allowed. In support of his contentions, counsel for the applicant also relied upon the following judgments:

- (i) Union of India & Anr. Vs S.Dharmalingam decided by the Hon'ble Apex Court on 28.10.1993 (1993 IV AD S.C. (L) 233
- (ii) PB, CAT, New Delhi dated 25th March, 2014 in OA No. 1027/2014.
- (iii) CAT, Ernakulam Bench dated 22nd March, 2012 in OA No. 457/2011.
- (iv) CAT Madras Bench order of 31st August, 2012 in OA No. 1210/2011 and connected OAs.

16. Considered the aforesaid contentions carefully and perused the record. One of the main issues in this OA is whether the past service of the applicant rendered in the Government School, Haryana (Moti Lal Nehru School of Sports, Rai from 1975 to 1983) should be counted as qualifying services for the purpose of the pension. In this regard the contention of the counsel for Respondents has been that the applicant never exercised his option as required under DOPT OM No. 28/10/84- Pension Unit dated 29.08.1984 within one year or even up to the extended period up to 31.12.1990. Further that he never even approached the Respondents for counting of his service and properly submitted relevant documents. Per contra, the counsel for applicant has contended that in the first place DOPT OM dated 29.08.1984 is not applicable in the case of the applicant because he has not come on transfer, but on open direct selection to KVS and this has been categorically upheld in order dated 08.01.2001 of this Tribunal in TA No. 3/2000 (SB CWP No. 3039/96) in the case of Hari Raj Swaroop Sharma Vs KVS.

ORIGINAL APPLICATION No. 613/2012

17. In this regard it is noted that the applicant had joined the service of the KVS on open selection basis in 1983 and had earlier worked in the State Government Haryana School from 1975 and his case is similar to that of the applicant in TA No. 3/2000 decided by this Tribunal on 08.01.2001, in which it has been categorically stated that the OM of 29th April 1984 pertains to transfer of persons and in the present case of the applicant also it is not a transfer, but open selection. Thus there is force in the contention of the counsel for applicant that there was no requirement for the applicant to give any option in this regard within one year or up to the extended dated up to 31.12.1990. It is also however, noted that the applicant also never seriously approached the respondents for counting of his service, though there is certain correspondence on record about his service particulars specially including Annexure A/3, A/5 and A/10. However, in view of the position upheld in aforesaid order of this Tribunal in TA No. 3/2000 vide order dated 08.01.2001, it is held that the service of the applicant rendered in Haryana Government School are required to be counted as qualifying service, though this view is subject to the larger question whether the applicant is entitled to pension under CCS (Pension) Rules 1972 which is being addressed in the subsequent following paras.

18. As far as the question of the applicant coming under the CCS (Pension) Rules 1972 is concerned, it is a fact that vide order dated 01.09.1988 (Annexure A/11), the KVS adopted Pension Scheme

ORIGINAL APPLICATION No. 613/2012

and all employees in service as on 01.01.1986 were deemed to have come under the Pension Rules, unless they specifically chose to opt for CPF. In this regard, it is noted that the applicant opted for CPF after joining service of KVS in June 1983, was allotted CPF No. 3472, but even after coming into force of the Circular of 1988 (Annexure A/11), he himself continued to contribute to CPF till his removal of service from 20.04.2001, (which was later treated as VRS from the same date). The applicant only on 02.04.2001 just prior to 2 weeks to the date of VRS i.e. 20.04.2001, asked for VRS subject to pension, gratuity etc. In this connection, the various judgements and orders relied upon by the respective counsels were seen. The judgements referred to by the counsel for applicant do not come to the rescue of the applicant, because in this case the applicant never asked for pension or to make for contribution to GPF and though being a senior officer having been Principal and Assistant Commissioner KVS at no time even objected to the deductions being made for CPF from his salary and therefore in a way he accepted the CPF scheme without raising any issues, and in this a way he is a CPF optee and only thought of claiming pension etc just about two weeks prior to his removal/voluntary retirement from service thus there is force in the contention of the case for Respondents that in this way the applicant be considered a CPF optee and is therefore not entitled to any pension as per CCS(Pension) Rules 1972.

19. In view of the above analysis, though it is accepted that the past service of the applicant in Haryana State Government School

ORIGINAL APPLICATION No. 613/2012

are required to be counted for the purpose of determining qualifying service if he is otherwise eligible for Pension, but in view of the conclusion drawn that the applicant is not entitled to be covered under the CCS(Pension) Rules 1972 even with reference to Circular date 01.09.1988 of Respondents (Annexure A/11) being practically a CPF optee, the main prayer of the applicant for grant of Pension and consequential benefits is not acceptable and is accordingly rejected.

The OA is disposed of as above with no order as to costs.



(MS.MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

Badetia/