

(Reserved on 04.12.2017)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 12th day of January, 2018.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/00512/2016

Jai Prakash Mishra, aged about 64 years, S/o Shri Ram Shiromani Mishra, Permanent address – Village & Post – Sonawa, District – Sultanpur, presently residing at Teliarganj in District Allahabad.
.....Applicant.

VE R S U S

1. Union of India through Secretary, Ministry of Human Resources Development Department of Secondary and Higher Education (Integrated Finance Division), 234-C, Shashtri Bhawan, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional area, Sahid Jeet Marg, New Delhi.
3. Kendriya Vidyalaya Sangathan, 18 Institutional area, Sahid Jeet Marg, New Delhi through Sr. Audit and Accounts Officer.
4. Joint Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional area, Sahid Jeet Marg, New Delhi.
5. Principal, Kendriya Vidyalaya, Damoh (M.P).
.....Respondents

Advocate for the applicant : Shri Vinod Kumar

Advocate for the Respondents: Shri N.P. Singh

ORDER

By means of the present original application the applicant has prayed for a direction to the respondents to switch over the applicant from Contributory Provident Fund Scheme (in short CPF Scheme) to pension scheme with effect from the date of retirement subject to the condition that applicant pays back the entire amount which had been received by him the eve of superannuation. A

direction has also been sought to the respondents to calculate and release the entire arrears of pension alongwith interest thereupon to the applicant.

2. The facts of the case, as per the O.A, in brief are that the applicant was initially appointed as primary teacher in Kendriya Vidyalaya Sangathan (in short KVS) on 03.10.1978 and retired on 30.06.2012 as TGT (Bio.) from Kendriya Vidyalaya, Damoh (M.P) (Annexure A-1 to the O.A). For the purpose of post retirement benefits, the applicant had applied for the CPF Scheme, 1962 at the time of his appointment. After Fourth Pay Commission recommendations, the Government of India issued a Memorandum dated 01.05.1987 (Annexure No. A-2 to the O.A) specifying that Central Government employees in service on 01.05.1987 shall be deemed to have come over to the Pension Scheme unless they specifically opt for the CPF Scheme, 1962. Clause 3.2 of the Scheme provides that the an employee has an option to continue under the CPF Scheme if he opts for it. The option to continue in CPF Scheme was to be exercised and conveyed to the concerned Head Office by 30.09.1987. It is further stated that as per the letter dated

14.12.2012 (Annexure A-3 to the O.A) which the applicant received in reply to question under RTI Act, 2005, the applicant has not opted to continue under the CPF Scheme on or before 30.09.1987. The applicant was in service on 01.01.1986 and also on 30.09.1987, therefore the applicant was to be treated under Pension Scheme and he was entitled to receive pension after his retirement as per the Circular dated 01.05.1987 (Annexure A-2 to the O.A). The applicant preferred representation dated 02.05.2012 followed by representation dated 28.12.2012 to the respondents for switching over to Pension Scheme. The respondents vide letter dated 20.02.2013 informed the applicant that his case is under consideration (Annexure A-6 to the O.A). It is stated that the Government of India issued Order No. F.19-20/2005-IFD dated 22.02.2006 (Annexure A-7 to the O.A) regarding grant of pensionary benefit. Then the applicant filed an appeal dated 11.07.2015 to the respondent no. 3 (Annexure No. A-8 to the O.A).

3. Having received no response, the applicant has filed the instant original application on the ground that in view of Office Memorandum dated 01.05.1987, he is entitled for Pension Scheme w.e.f. 01.05.1987. It is further stated that as per the instruction / clarification dated 22.02.2006 the memorandum dated 01.05.1987 shall continue to operate in favour of the applicant. It is stated that Writ Petition No. 51110/2002 was filed by Smt. Shanti & Ors and Writ Petition No. 50352/2002 filed by Harcharan & Ors, which was disposed of by the Hon'ble High Court, Allahabad vide judgment dated 25.07.2006 (Annexure A-9 to the O.A) wherein direction was issued to extend the benefit of circular dated 01.05.1987 to the petitioners. The applicant has also referred to an order dated 30.11.2015 passed by this Tribunal in O.A No. 1637/2012 – Prakash Chandra Vs. U.O.I & Ors (Annexure No. A-10 to the O.A).

4. The respondents have filed Counter Affidavit (in short CA) stating therein that the provisions of Office Memorandum dated 01.05.1987 are applicable to those Government employees who are subscribing to the CPF under CPF Rules, 1962. The employees of the autonomous body are not covered automatically by this O.M. It is stated that vide KVS OM dated 01.09.1988 it was decided that the persons joining service on or after 01.01.1986 shall be governed by GPF-cum-Pension Scheme and will

have no option for CPF Scheme. However, the employees who would like to continue in CPF Scheme were required to exercise option to continue in CPF. It was stated in the CA that the applicant who was appointed on 03.10.1978 had opted for the CPF Scheme. He also retained CPF Scheme in response to KVS OM dated 24.12.2004 (Annexure CA-1 to the CA) as would be evident from pay bill, Form 16 and CPF Statement. Even though the applicant was promoted as TGT, he shall be covered under CPF. It is stated that as per MHRD Circular dated 22.02.2006 (Annexure CA-2 to the CA), those employees who were in service on or before 31.12.2003 and who were governed by the CPF Scheme, they will continue to be governed by the CPF Scheme.

5. The applicant has filed Rejoinder Affidavit reiterating the facts in O.A. It is further stated that prior to issue of Circular dated 01.05.1987 by the DOPT, all the employees were governed under CPF Scheme and there was no provision for option. But after issue of Circular dated 01.05.1987, as per para 3.1 of the Circular, all CPF beneficiaries who were in service as on 01.01.1986 will be deemed to have come under the Pension Scheme automatically. It is also stated that subsequent decision taken by the department cannot supersede the provision of Circular dated 01.05.1987.

6. Heard Shri Vinod Kumar, counsel for the applicant and Shri N.P. Singh, counsel for respondents. Counsel for the applicant submitted that the applicant is eligible to get the benefit of pension in view of the order of the Government contained in O.M dated 01.05.1987 and this O.M has been accepted by the KVS organization in toto. In pursuance to the said O.M, the applicant has not furnished any option to be covered under CPF hence as per the deemed provision in the O.M, the applicant will be deemed to be covered under pension scheme but the respondents have rejected such claim of the applicant in this regard. Learned counsel also pointed out the reply of the respondents dated 14.12.2012 given in reply to a query under RTI Act 2005 which is annexed as Annexure A-3 to the O.A. This reply dated 14.12.2012 clearly indicates that no option was submitted by the applicant in pursuance to the O.M dated 01.05.1987 opting for CPF. Learned counsel also cited the following judgments in support of his case: -

i. Judgment dated 05.01.2017 passed by Hon'ble High Court, Madras in W.P.No. 28092/2015 – Union of India & Ors. Vs. S. Subbiah & Ors.

ii. Judgment dated 24.02.2017 passed by Hon'ble High Court, Madras in W.P.No. 19215/2015 – N. Subramanian Vs. The Commissioner, Kendriya Vidyalaya Sangathan & Ors.

iii. Judgment dated 24.08.2016 passed by Hon'ble High Court, Delhi in a bunch of writ petitions relating to University of Delhi in the case of Smt. Shashi Kiran and others Vs. Union of India others.

iv. Judgment dated 25.07.2006 by the Hon'ble High Court, Allahabad

v. Judgment dated 08.11.2016 in O.A No. 2013/14 of C.A.T, Principal Bench.

vi. Order dated 30.11.2015 passed by C.A.T., Allahabad bench in O.A No. 1637/2012 – Prakash Chand Vs. U.O.I & Ors.

7. Learned counsel for respondents reiterated the contention in the CA stating that the applicant had opted for CPF Scheme and he was getting the benefit under CPF Scheme till his date of retirement. It was stated that the option was submitted by the applicant is however, not available on the records with the respondents. The point that he has not submitted option to be covered under CPF Scheme was not raised by the applicant before his retirement. Learned counsel has cited the case of KVS & Ors. Vs. Jaspal Kaur & Ors decided by the Hon'ble Supreme Court on 06.06.2017 in Case No. Appeal (Civil) 2876/2007. It was also submitted that as indicated in the CA, the facts of the cases cited by the applicant's counsel are different and the order dated 30.11.2015 by this Tribunal in O.A No. 1637/2012 has been stayed by Hon'ble Allahabad High Court in W.P. No. 26380/2016 filed by the respondents vide order dated 30.05.2016 (Annexure CA-3 of the CA).

8. The pleadings and submissions made by the parties in this case have duly been considered by me.

9. The objection of the respondents in the CA that the case is not maintainable on the ground of limitation is taken up first. Since in this case, the claim is for pension, it is considered to be a recurring cause of action in the light of the decision of Hon'ble Supreme Court in the case of M.R. Gupta Vs. UOI & Ors – 1995 SCC (5) 628. Hence, this O.A having been filed claiming to be covered under pension scheme is considered to be within limitation period.

10. Regarding applicability of the judgment of Hon'ble Supreme Court in the case of Jaspal Kaur (Supra) to this case as claimed by the respondents, it is seen that in the case of Jaspal Kaur (Supra), the concerned employee of the KVS was allotted a new CPF number after the cut off date as per the KVS Circular dated 1.09.1988. Subsequently, a letter was received from the concerned employee that she should be changed from CPF Scheme to GPF Scheme. These facts alongwith other evidence indicated that the concerned employee in the case of Jaspal Kaur (Supra) had opted for continuing in CPF Scheme although the option form was not traceable. Accordingly, Hon'ble Supreme Court decided that the concerned employee had opted for CPF Scheme and hence, was not eligible to be covered under GPF Scheme. Hence, as per the ratio of the decision of Hon'ble Supreme Court in the case of Jaspal Kaur (Supra), circumstantial evidence filing of option of the employee to be covered under CPF as per KVS circular dated 1.9.1988 needs to be taken into account. It is seen that in the present OA, no such evidence has been furnished by respondents to prove that the applicant in this O.A had opted for the CPF Scheme prior to the cut off date as per KVS Circular dated 01.09.1988, even if the option in prescribed format was not traceable. Whether the applicant was allotted a new CPF number after the cut off date as per the KVS Circular dated 01.09.1988 like the applicant in the case of Jaspal Kaur (Supra), has not been indicated in the CA or in the pleadings of the respondents. Hence, in the absence of any circumstantial evidence to prove that the applicant had submitted the option to be in CPF Scheme, the ratio of the judgment in Jaspal Kaur (Supra) will not be applicable to this case.

11. Learned counsel for the applicant has cited a number of cases relating to the employees of different organization including KVS employees. The decision in these cases were based on the principle that the employees who submitted option to be covered under CPF scheme within the cut off date,

cannot be allowed to switch over to GPF-cum-pension scheme and the employees who had not furnished their option within cut off date as stipulated in Government Circular dated 01.05.1987 or KVS Circular dated 01.09.1988 will be deemed to be covered under GPF-cum-pension Scheme as per the said Circular. The case of the applicant in O.A No. 1637/2012 which was decided by this Tribunal vide order dated 30.11.2015 (Annexure A-10 to the O.A) is similar to the applicant in this case. But since the said order dated 30.11.2015 of this Tribunal in O.A No. 1637/2012 has been stayed by Hon'ble High Court, Allahabad vide order dated 30.05.2016 (Annexure CA-3 to the CA), the order dated 30.11.2015 cannot be relied upon to decide this case.

12. It is seen that Hon'ble High Court, Allahabad has disposed of the case of some employees of the Ministry of Defence in W.P No. 51190/2002 – Smt. Shanti and others Vs. Union of India and others alongwith another writ petition of another group of employee by order dated 25.07.2006, copy of which is enclosed by the applicant at Annexure A-9 to the O.A. The order dated 25.07.2006 of Hon'ble Allahabad High Court stated as under: -

“.....In case the petitioners file a fresh representation individually, the respondents shall decide their representations in accordance with law and taking into consideration the circular dated 1.5.1987.....”

13. In this case, as indicated in paragraph 10 of this order, sufficient evidence or circumstantial evidence are not available to determine whether the applicant had submitted his option to be in CPF within the cut off date in pursuance to the KVS circular dated 01.09.1988 in line with the Government of India's O.M dated 01.05.1987. Applicant has taken the plea that he had not submitted any option to be in CPF within the cut off date stipulated in Government O.M dated 01.05.1987. But as stated in the CA filed by the respondents, for KVS employees, the relevant Circular is the KVS Circular dated 01.09.1988 by which the benefits extended to Government employees vide O.M dated 01.05.1987 was extended to KVS employee. But the applicant is silent in his pleadings about the KVS Circular dated 01.09.1988 which is relevant for this case. Hence, based on the existing materials on record, it is not possible to determine whether the applicant had submitted any option to continue to be covered under CPF Scheme within the cut off date stipulated in the KVS Circular dated 01.09.1988.

14. In view of the above and taking into account the order of Hon'ble High Court, Allahabad in W.P. No. 51110/2002, this O.A is disposed of with a direction that if the applicant files a fresh representation to respondent No. 2 within two weeks of receipt of a copy of this order, with sufficient evidence and justification in support of his claim, then the respondent No. 2/ competent authority shall decide such representation of the applicant in accordance with law by passing a speaking and reasoned order taking into consideration the KVS Circular dated 01.09.1988 within two months of the date of submission of fresh representation by the applicant to the respondent No. 2. The O.A is disposed of accordingly. No costs.

(GOKUL CHANDRA PATI)
MEMBER- A.

Anand...

