

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.1358/2016

Order Reserved on: 25.05.2017  
Order pronounced on 30.05.2017

**Hon'ble Shri V. Ajay Kumar, Member (J)**

Shri Zila Singh  
Aged about 63 years  
S/o Sh. Buchha Singh  
R/o 23, Dev Rishi Enclave  
Lane-3, Dehra Khas, Dehradun  
**(Retired as PGT(Physics), KVS).....** Applicant

(By Advocate: Sh. S.K.Gupta)

Versus

1. The Commissioner  
Kendriya Vidyalaya Sangthan  
18, Institutional Area  
Shaheed Jeet Singh Marg  
New Delhi – 110 016.
2. Joint Commissioner (Finance)  
Kendriya Vidyalaya Sangthan  
18, Institutional Area  
Shaheed Jeet Singh Marg  
New Delhi – 110 016. ... Respondents

(By Advocate: Shri S.Rajappa)

**ORDER**

**By Shri V. Ajay Kumar, Member (J):**

The applicant, a retired PGT (Physics) of the Respondent-Kindriya Vidhyalaya Sangathan (in short, KVS), filed the OA seeking quashing

of the Annexure A1-Memorandum dated 12.10.2015, whereunder the respondents rejected the request of the applicant for conversion from CPF to GPF-cum-Pension Scheme.

2. The brief facts of the case are that the applicant was initially recruited as TGT (PCM) in the respondent-KVS on 05.08.1985 and thereafter, he was directly recruited as PGT (Physics), vide Letter dated 16/21.11.1987, and accordingly retired with effect from 01.08.2012 on attaining the age of superannuation.

3. It is submitted that after the applicant was appointed as PGT (Physics) by way of direct recruitment, vide Letter dated 16/21.11.1987, in terms of the recommendations of the 4<sup>th</sup> CPC, the respondent-KVS in its 51<sup>st</sup> meeting of the Board of Governors decided to adopt the decisions of the Government of India made on the recommendations of the 4<sup>th</sup> CPC, for the employees of the KVS also *mutatis mutandis* for change over from CPF to Pension Scheme in the manner indicated in OM No.4/1/87-PIC-I, dated 01.05.1987. Accordingly, it was decided vide KVS OM No.152-1/79-80/KVS/Budget/Part.II, dated 01.09.1988 that 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.

4. The learned counsel for the applicant submits that in view of the above referred decision of the respondent-KVS, though they are required to convert the applicant from CPF to Pension Scheme, as there was no option for CPF Scheme for those persons who joined

service on or after 01.01.1986 to opt for continuation under CPF Scheme, however, wrongly continued the applicant under CPF Scheme.

5. When the applicant realized the same, requested the respondents to convert him from CPF to Pension Scheme, but when the said request is unanswered he filed OA No.2963/2015, and the same was disposed of on 12.08.2015 directing the respondents to consider his case in terms of the decisions in identical matters. The respondents passed the impugned order on 12.10.2015, by rejecting the claim of the applicant.

6. Shri S.K.Gupta, the learned counsel for the applicant, while submitting that as per the decision of the respondent-KVS itself, there is no option available for the persons, who joined in service on or after 01.01.1986 to continue in CPF Scheme, placed reliance on a Division Bench decision of this Tribunal in **Hoshiar Singh v. Union of India**, OA No.3112/2013, dated 19.09.2016, in addition to certain other decisions. He further submits that the respondents in the identical circumstances allowed one Mrs. Usha Rani Singh to convert from CPF Scheme to GPF – cum- Pension Scheme and he is also entitled for extension of the same benefit.

7. Shri S.Rajappa, appearing for the respondents, submits that the employees, who were in service as on 01.09.1988, were given an option to continue in CPF Scheme, if they wish and that the applicant who was working as PGT (Physics) as on 01.09.1988, had opted to

continue in CPF Scheme, in response to OM dated 01.09.1988, and that though due to lapse of long time the original option form submitted by the applicant is not traceable but the secondary records indicate that he was aware of the fact that he had continued under CPF Scheme.

8. The learned counsel for the respondents, further submits that the matter regarding one-time permission for changeover from CPF to GPF Scheme, for teaching and non-teaching staff of KVS was considered by MHRD, in consultation with Department of Expenditure and vide the letter dated 07.04.2015 of the MHRD, it was informed that the employees of KVS, who were in service as on 01.01.1986 and decided to opt for CPF made a conscious decision knowing well that the option once exercised is final and granting of one more option to such CPF Subscribers in KVS could have repercussion elsewhere with such an option having to be extended to all other CPF beneficiaries as well and whose number is quite substantial. Accordingly, the learned counsel submits that there is no illegality in their action.

9. The learned counsel placed reliance on **KVS & Others v. Jaspal Kaur and Others**, in Appeal Civil No.2876/2007 dated 06.06.2007 of the Hon'ble Apex Court, in support of his contentions.

10. In **Hoshiar Singh** (supra), the applicant initially joined in KVS as Primary Teacher (PRT) through direct recruitment on 21.09.1979 and again through direct recruitment, he was appointed as Trained Graduate Teacher (TGT) [Maths] on 20.07.1981, and again through

direct recruitment was appointed as Post Graduate Teacher (PGT) [Maths] on 15.09.2002 in KVS. Later, he was appointed as Principal vide letter dated 28.08.2002. When his request for conversion from CPF to Pension Scheme was rejected, this Tribunal, after considering the various decisions, including the decisions relied on by both the counsel in the instant OA, allowed the prayer of Shri Hoshiar Singh and the relevant paragraphs read as under:

"2.2 Prior to 01.01.1986, KVS was having Contributory Provident Fund (CPF) Scheme and it did not have any pension scheme for its employees. CPF scheme is believed to be in vogue in KVS since 1966. Pursuant to the 4th CPC recommendations, General Provident Fund Scheme coupled with Pension Scheme (in short, Pension Scheme) was implemented in KVS w.e.f. 01.01.1986. As per Annexure A-11 Appendix-13 titled "Changeover of employees from Contributory Provident Fund Scheme to Pension Scheme", all CPF beneficiaries, who were in service on 1st January, 1986, and who are still in service on the date of issue of these orders i.e. 1st May, 1987, will be deemed to have come over to the Pension Scheme.

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g) In the case of Joshnson P. John v. Assistant Commissioner, KVS &Ors.in OA-457/2011 the Ernakulam Bench of this Hon'ble Tribunal had observed that the question of 8 (OA No.3112/2013) asking for option from an employee whose induction in the service is posterior to 01.09.1988 does not arise at all. The said order has been upheld by the Hon'ble High Court of Kerala vide judgment dated 13.08.2013 dismissing the Writ Petition filed by the KVS against the order of the Ernakulam Bench. Similar view has been taken by this Bench of the Hon'ble Tribunal in OA-1027/2014 – Shri Santosh Kumar Verma v. KVS &Anr. and OA No.1039/2014 – Ms.Usha Rani Singh v. K.V.S. &Anr. vide common order dated 25.03.2014. All these judgments have since been implemented by KVS.

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8. The ratio laid down by the Hon'ble Apex Court in the case of Jaspal Kaur (supra) on which the learned counsel for the respondents laid tremendous amount of emphasis, simply does not apply to the case of the applicant for two reasons. Firstly, the Hon'ble Apex Court in that case had perused the original service book of Jaspal Kaur and had found that even on 10.06.2005 in the Last Pay Certificate, it was stated that she had opted for the CPF Scheme. Based on the said observation, the Hon'ble Apex Court held that merely because the original documents relating to exercise to option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. Secondly, as held by us, the applicant was appointed as Principal in the year 2002 on direct recruitment basis and at that time the GPF-cum-Pension

Scheme was automatically applicable to all direct recruits to various posts in KVS. The other judgments quoted by the learned counsel for the respondents do not have any bearing to this case.”

11. As observed above, even as per the impugned Annexure A1, Memorandum dated 12.10.2015, the persons joined service on or after 01.01.1986 shall be governed by GPF cum – Pension Scheme, and will have no option for CPF Scheme. The applicant, admittedly, joined as PGT (Physics) through direct recruitment after 01.01.1986, shall have to be governed by Pension Scheme only. Even if he has opted for continuation in CPF Scheme, which he deny, his continuation in CPF is against to the decision of the KVS itself. For the same reason, the MHRD letter dated 07.04.2015 has no force.

12. The decision in **Hosiar Singh** (supra) wherein the decision of the Hon’ble Apex Court in **Jaspal Kaur** (supra), on which the learned counsel for the respondents placed heavy reliance, was also considered, squarely applicable to the case of the applicant also.

13. In the circumstances and for the aforesaid reasons, the impugned order is quashed and the respondents are directed to convert the case of the applicant from CPF Scheme to GPF cum Pension Scheme on the same terms and conditions as in the case of an identical employee, namely, Usha Rani Singh, with all consequential benefits. The OA is accordingly allowed. No costs.

(V. Ajay Kumar)  
Member (J)

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