

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. No.100/2416/2015**

**New Delhi this the 25<sup>th</sup> day of October, 2016**

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)**  
**HON'BLE MR. P.K. BASU, MEMBER (A)**

Dr. B. Shyam Prasad Raju, Retired Professor  
S/o B. Thirumala Raju, aged about 62 years  
R/o House No.1193, 8<sup>th</sup> Main, 12<sup>th</sup> Cross,  
Vijayanagar Ist Stage,  
Mysore-570017  
Karnataka.

....Applicant

(Argued by: Shri Rajat Agnihotri for Shri Manu Mridul,  
Advocate)

Versus

National Council of Education Research and Training,  
Through its Secretary,  
Sri Aurobindo Marg,  
New Delhi-110016.

...Respondent

(By Advocate: None)

**ORDER (ORAL)**

**Justice M. S. Sullar, Member (J)**

The matrix of the facts and material, culminating in the commencement, relevant for deciding the instant Original Application (OA), and emanating from the record, is that, initially, in the wake of Office Memorandum dated 08.04.1985 (Annexure A-1), applicant, Dr. B. Shyam Prasad Raju (since retired), was offered the post of Lecturer in Mathematics in National Council of Educational Research and Training (for brevity "NCERT"), Sri Aurobindo Marg, New Delhi, vide offer of appointment dated 31.05.1985 (Annexure A-2). Thereafter, on the

recommendations of the Selection Committee, applicant was appointed as Lecturer in Mathematics in the pay scale of Rs.700-40-1100-50-1300-Assessment-50-1600 w.e.f. 25.10.1985 (F/N) and was posted in Regional College of Education, Mysore, vide letter dated 15.11.1985 (Annexure A-3).

2. Meanwhile, the recommendations of the 4<sup>th</sup> Central Pay Commission were notified vide Office Memorandum dated 01.05.1987 (Annexure A-4) and the Government employees subscribing to Contributory Provident Fund (CPF) Scheme were given an option to switch over to the Pension/General Pension Fund (GPF) Scheme. The applicant opted to continue with CPF Scheme as, according to him, it was more beneficial.

3. According to the applicant, that subsequently in pursuance of advertisement (Annexure A-5), he applied for the post of Reader in the NCERT. He was called for interview vide Memorandum dated 05.03.1993 (Annexure A-6). Consequently, in pursuance of the recommendations of the Selection Committee, applicant was offered appointment to the post of Reader in Mathematics, vide Memorandum dated 10.05.1993 (Annexure A-7) initially to be on probation for a period of 2 years. Ultimately, he was appointed as a Reader in Mathematics in Regional College of Education, Mysore with effect from 15.09.1993, vide letter dated 03.06.1993 (Annexure A-8). In this manner, the

appointment of the applicant as a Reader in an independent substantive post, by way of direct recruitment was a fresh appointment for all intents and purposes.

4. Thus it was pleaded that, being a fresh appointment, the earlier terms and conditions of service relating to tenure as a Lecturer in Mathematics, automatically came to an end and the services of the applicant were governed by the fresh terms and conditions of service as prevalent on his date of fresh appointment as Reader in Mathematics with the respondent. Although the GPF Scheme was applicable at the time of fresh appointment of the applicant as a Reader, but respondent has not granted the benefit of GPF Scheme to the applicant on the ground, that he previously worked as a Lecturer and did not opt for Pension Scheme in pursuance of the recommendations of the 4<sup>th</sup> Central Pay Commission (Annexure A-4).

5. The case of the applicant further proceeds that despite his fresh recruitment as a Reader in an independent substantive post, he ought to have been governed by the GPF Scheme, but the same was not granted and he was continued on CPF Scheme by the respondent. He made several representations (Annexure A-13 Colly) requesting the competent authority to consider his case for placing him under GPF/Pension Scheme. Even the respondent issued Memorandum dated 18.11.2004 (Annexure A-9), whereby it sought the details of all officers working under

the various regional colleges, who were on CPF Scheme, but wished to switch over to GPF Scheme. In pursuance thereof, the applicant made representation dated 01.12.2004 requesting the respondent to switch his case from CPF Scheme to GPF Scheme as has been done in case of Ms. M. Chandra in the year 1991 and in case of Mr. A.P. Verma which was granted by Hon'ble Delhi High Court in **W.P. ( C) No.8489/2011** vide its order dated 25.02.2013 (Annexure A-11). Even the Ministry of Human Resource Development directed the respondent to prepare and forward a list of officers who were unable to opt for GPF/Pension Scheme due to bona fide reasons, vide Memorandum dated 01.02.2013 (Annexure A-10).

6. Levelling a variety of allegations and narrating the sequence of events, in all, the applicant claimed that since he was freshly recruited by way of direct recruitment as a Reader w.e.f. 15.05.1993 when the GPF Scheme was in force, so he is entitled to all the consequential benefits of pension as per GPF Scheme, but the respondent did not grant the benefit despite repeated representations and he ultimately attained the age of superannuation on 30.04.2015. On the strength of aforesaid grounds, the applicant has preferred the instant OA, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, claiming the following reliefs:-

“(a) Declare that the applicant is entitled to be governed by the GPF Scheme/Pension Scheme as envisaged under Office Memorandum dated 01.05.1987; and

(b) Direct the respondent to grant pensionary benefits to the applicant after making necessary deduction in the manner provided in Office Memorandum dated 01.05.1987”.

7. The respondent refuted the claim of the applicant and filed the counter reply, wherein it was pleaded that the applicant had joined the NCERT on 26.10.1985 as Lecturer in Mathematics and he opted for CPF Scheme at the time of appointment. Even he did not opt for GPF Scheme, before the cut-off date for exercising the option in pursuance of letters dated 01.05.1987 (Annexure A-4) and dated 27.07.1987 (Annexure R-1). Since the applicant did not opt for GPF Scheme, so he cannot subsequently be permitted to switch over to GPF Scheme in the garb of his fresh appointment on the post of Reader w.e.f. 15.05.1993 in pursuance of direct recruitment.

8. According to the respondent, applicant cannot claim the parity on the basis of Ms. M. Chandra and Mr. A.P. Verma, as the applicant would be continued to be governed by the same set of rules prevalent at the time of his initial appointment as Lecturer. Mere joining in higher post of Reader in the same organisation, would not entitle him to opt for GPF Scheme and he would be entitled to be governed by CPF Scheme. The issuance of OMs dated 18.11.2004 (Annexure A-9) and 01.02.2013 (Annexure A-10) was not denied by the respondent.

9. Virtually acknowledging the factual matrix and reiterating the validity of respondent's action, in not granting the benefit of GPF Scheme to the applicant, the respondent has stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal. That is how we are seized of the matter.

10. At the very outset, it will not be out of place to mention here that nemo had appeared on behalf of respondent on 13.05.2016 and 19.07.2016. Ultimately, the case was slated for arguments for today in the presence of the parties. Since today, nobody has appeared on behalf of the respondent to argue the case, so we have no option but to decide the matter after hearing the learned counsel for the applicant and going through the record.

11. Having heard the learned counsel for the applicant and having gone through the record with his valuable help and after bestowal of thoughts over the entire matter, we are of the firm view that the present OA deserves to be allowed, for the reasons mentioned hereinbelow.

12. As is evident from the record, that the applicant was initially appointed on the post of Lecturer with effect from 26.10.1985 with NCERT. He opted for CPF Scheme. Subsequently, in the wake of advertisement and after successfully completing the recruitment process and interview, he was appointed on the post of Reader with effect from 15.05.1993 as a direct recruit in the NCERT. The GPF

Scheme was in operation when the applicant was appointed as a Reader in Mathematics, by way of direct recruitment. Thus, it would be seen that the facts of the case are neither intricate nor much disputed and falls within a narrow compass.

13. Such this being the position on record, now the short and significant question, that arises for our consideration is as to whether the applicant is entitled to GPF/Pension Scheme in the facts and circumstances of the case or not?

14. Having regards to the contention of the learned counsel for the applicant, the pleadings of the parties and documents submitted therewith, to our mind, the answer must obviously be in the affirmative.

15. What cannot possibly be disputed here is that, having completed the process of fresh recruitment, applicant was appointed as a Reader, by way of direct recruitment in NCERT in an independent substantive post w.e.f. 15.05.1993 on probation for a period of 2 years, which was filled through open selection process, by virtue of offer of appointment letters dated 10.05.1993 (Annexure A-7) and dated 3/4.6.1993 (Annexure A-8). The terms and conditions of service of the applicant, as Reader were governed by the relevant rules and orders issued by the Council from time to time and his pay was fixed under the normal rules. It is not a matter of dispute that the GPF Scheme was in operation at the time of appointment of the applicant as Reader in the

substantive post. In that eventuality, indeed, the applicant is also entitled to the benefit of existing GPF Scheme at the relevant time of his appointment as Reader by way of direct recruitment. The mere fact that the applicant has also earlier served as Lecturer in NCERT and was earlier governed by CPF Scheme, ipso facto, is not a ground, much less cogent, to deny the benefit of GPF Scheme prevalent at the time of fresh appointment of applicant as Reader on substantive post by way of direct recruitment, as contrary pleaded in the reply of the respondent. This matter is no more *res integra* and is now well settled.

16. An identical question came to be decided by Hon'ble High Court of Delhi in cases **A.P. Verma Vs. NCERT W.P. (C) No.8489/2011** and **A.K. Sacheti Vs. NCERT W.P. (C) No.8491/2011** decided on 25.02.2013 (Annexure A-11) wherein having considered the similar question it was ruled that if the petitioners had been put on probation for a period of 2 years, subsequent upon their appointment to the relevant post through direct recruitment in an open selection, then the applicants (therein) were entitled to the benefit of GPF Scheme. The judgment of Hon'ble Delhi High Court (Annexure A-11) was upheld by Hon'ble Apex Court in **Special Leave to Appeal (C) No.(s) 39272-39273/2013** titled **NCERT Vs. A.P. Verma etc.** decided on 05.09.2014 (Annexure A-12).

17. This matter can be viewed entirely from a different angle. A similarly situated applicant Krishan Murari Gupta has filed OA No.119/2014. He was also appointed as Professor by way of direct recruitment. He filed the representations requesting the respondent-NCERT for treating him to be governed by GPF/Pension Scheme instead of CPF Scheme. However, the said representations were rejected. Having relied upon the observations of Hon'ble High Court of Delhi in cases **A.P. Verma** and **A.K. Sacheti** (supra), it was held that applicant (therein) was entitled to the similar benefit of GPF Scheme under the similar set of circumstances, vide order dated 03.06.2016 by a Coordinate Bench of this Tribunal.

18. Aggrieved thereby, the **Writ Petition (C ) 8151/2016** tilted **NCERT Vs. Krishan Murari Gupta** filed by NCERT was dismissed by Hon'ble High Court of Delhi vide judgment dated 16.09.2016, which, in substance is as under:-

"10. In the present case, it is observed that the said Ms M.Chandra had opted for the CPF scheme in her erstwhile organization as well as in 1991 when she was absorbed in the services of the respondent NCERT. This is evident from the document appended at page 188 of the present petition. In this regard the respondent after obtaining the approval of the Ministry of Human Resource Development vide letter No.F.1-47/2006-Sch.4 dated 09.04.2007 on the representation of the said Ms. Chandra permitted her to exercise the option to switch over from CPF to GPF/Pension scheme on two earlier occasions. It is also observed that in the case of the said Ms Pushplata Verma, the incumbent was also governed by the CPF scheme while in her erstwhile department and had been permitted by the appointment letter issued to her to get the benefit of pension-cum-gratuity as per the rules of the Council.

11. In the present case, it is observed that in the backdrop of the aforesaid facts, deeming the petitioners be governed by CPF scheme even when it was not in vogue and presuming service conditions of their last service to be applicable upon them, has resulted in a wholly anomalous situation.

12. In view of the fact that the respondent NCERT has permitted similarly placed appointees to switch over to the GPF scheme after

being selected through the same recruitment process, a legitimate expectation is raised in favour of the petitioners to be treated in a similar manner. The expectation is further accentuated when the said appointees were permitted to derive the benefit of GPF scheme despite having exercised the option of CPF scheme even after they were absorbed in the service of the respondent NCERT.

13. Therefore, when similarly placed employees of the respondent have been extended the benefit, it would be unreasonable and improper to deny to the petitioners the benefit of the GPF/Pension scheme merely because they were earlier engaged in the service of the respondent NCERT. In this behalf we must observe that the petitioners had been put on probation for a period of two years subsequent upon their appointment to the relevant post in PSSCIVE, Bhopal. The Tribunal failed to appreciate that it is settled law that once a person is appointed to a substantive post through direct recruitment in an open selection after competing with internal and external candidates the appointment on the said post is a fresh appointment. Therefore, in our opinion, the petitioners have been subjected to hostile discrimination, although they were appointed by the same recruitment procedure as others, only because they were working with one of the establishments of the respondent earlier. In our view the same constitutes unequal treatment amongst equals and is violative of Article 14 of the Constitution of India.

14. We, accordingly, allow the writ petitions and set aside the order of the Tribunal. Consequently, the respondents are directed to extend all the benefits of the GPF/Pension Scheme after making necessary deductions to both the petitioners. No costs.”

19. In this manner, once the same benefit of GPF and Pension Scheme was granted to the similarly situated person, then the same very benefit cannot possibly be denied to the applicant as well on the principle of parity in view of law laid down by Hon'ble Apex Court in cases ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481*** and ***Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120*** wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative

action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

20. Therefore, the applicant is also entitled to the benefit of same very GPF Scheme on the basis of parity as well in the obtaining circumstances of the case in the manner discussed hereinabove. Thus, the contrary pleadings of the respondent *stricto sensu* deserve to be ignored. The indicated ratio of law laid down by Hon'ble Apex Court and Hon'ble High Court of Delhi is *mutatis mutandis* applicable to the present controversy and is a complete answer to the problem in hand.

21. In the light of the aforesaid reasons, OA is hereby accepted. Applicant is held entitled to be governed by GPF-cum-Pension Scheme with effect from his joining the independent substantive post of Reader. At the same time the respondent is directed to release all the consequential pensionary benefits to applicant after making necessary deductions within a period of 2 months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

**(P.K. BASU)**  
**MEMBER (A)**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**  
**25.10.2016**

Rakesh