

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. No.100/1865/2015  
With  
O.A. No.100/1987/2015**

**New Delhi this the 8<sup>th</sup> day of December, 2016**

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

**(1) OA No.100/1865/2015**

Jaishree Singh Tomar  
W/o Col. (Retd.) S.P. Tomar  
Aged about 58 years  
TGT (Hindi)  
Kendriya Vidyalaya Sector-2,  
R.K. Puram,  
New Delhi-110022. ....Applicant

(Argued by: Shri C. Bheemanna, Advocate)

Versus

1. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110016.
2. The Deputy Commissioner (Admn.)  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110016. ...Respondents

(By Advocates:Ms. Shalini A.P.for Shri S. Rajappa)

**(2) O.A. No.100.1987/2015**

Shri Dhar Mishra  
S/o late Shri Chandrashekhar Mishra  
DOB: 03.10.1953 (Aged about 62 years)  
Presently residing at G-30A, Gali No.1A,  
Vishwash Park, Som Bazar Road,  
Uttam Nagar, New Delhi-110059  
(Retired as Principal, KV No.1,  
AFS, Gorakhpur, UP). ..Applicant

(Argued by: Shri Satyendra Kumar, Advocate)

Versus

1. Union of India through  
The Secretary,  
Ministry of Human Resources Development  
Govt. of India, Shastri Bhawan,  
New Delhi.
2. Kendriya Vidyalaya Sangathan  
Through the Commissioner,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi.  
(Through: The Commissioner)
3. The Joint Commissioner (Admn.)  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110016. ....Respondents

(By Advocates: Ms. Shalini A.P.for Shri S. Rajappa)

**ORDER (ORAL)**

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

As identical questions of law and facts are involved, so we propose to dispose of **Original Application (OA) No.100/1865/2015** titled as **Jaishree Singh Tomar Vs. The Commissioner of KVS and Another** (for brevity **Ist case**) and **OA No.100/1987/2015** titled as **Dhar Mishra Vs. U.O.I. & Others** (for short **2<sup>nd</sup> case**), by means of this common decision, in order to avoid repetition of facts, and as also acknowledged by the learned counsel for the parties.

2. The matrix of the facts and material, culminating in the commencement, relevant for deciding the core controversy involved in the instant OAs, and exposted from

the record, is that, applicant (in Ist case) was initially appointed as a Primary Teacher on 27.07.1978 in Kendriya Vidyalaya Sangath (KVS), Salt Lake, Kolkata. At the time of her initial appointment, she opted for Central School (Employees) Contributory Fund Scheme prevalent at that time. Subsequently, consequent upon clearing the fresh recruitment process, she was duly selected, by way of direct recruitment on 11.08.1981 as a Trained Graduate Teacher (TGT) (Hindi). She has successfully completed more than 38 years of her regular service in KVS.

3. Sequelly, the applicant (in 2<sup>nd</sup> case), was initially appointed as TGT on 17.07.1978 and was allotted Contributory Provident Fund (CPF) prevalent at that time. Thereafter, consequent upon clearing the fresh recruitment process, he was selected as Post Graduate Teacher (PGT) (Physics). He joined the said post on 14.12.1981, by way of direct recruitment. Subsequently, he joined as Principal on 03.07.2003 (Annexure A-1 Colly) on direct recruitment basis in KVS. After attaining the age of superannuation, applicant (in 2<sup>nd</sup> case) had retired on 31.10.2013.

4. The case set-up by the applicants, in brief, insofar as relevant, is that, they were freshly appointed to the post of TGT (Hindi) (in Ist case) and as Principal (in 2<sup>nd</sup> case), consequent upon clearing a fresh recruitment process by way of direct appointment. Thereafter, they had no connection with their initial appointment as Primary

Teacher and TGT respectively. According to the applicants, since the General Provident Fund (GPF)-cum-Pension Scheme was operating at the time of their fresh recruitment on the subsequent post, by way of direct recruitment, so they are also entitled to the benefit of GPF Scheme.

5. The case of the applicants further proceeds that the KVS has also adopted the GPF Scheme (Annexure A-4) of the Central Government which was also made applicable to the teachers of KVS, vide letter dated 01.09.1988 (Annexure A-5). Some of the similarly situated teachers were permitted to adopt the GPF Scheme but the same benefits were denied to the applicants despite representations. Even the Central Administrative Tribunal directed the KVS Authorities to consider the claim of the similarly situated teachers for retiral benefits under the CCS (Pension) Rules in **OA No.1027/2014** titled as **Santosh Kumar Verma Vs. KVS & Others** and **OA No.1039/2014** titled as **Ms. Usha Rani Vs. KVS & Others** decided on 25.03.2014 (Annexure A-6). It was alleged that although the representation dated 23.08.2014 filed by the applicant (in 1<sup>st</sup> case) was forwarded to the Commissioner, KVS, vide letter dated 26.08.2014 and she has also filed other representations dated 24.11.2014 (Annexure A-1 Colly) (in 1<sup>st</sup> case) and similarly applicant (in 2<sup>nd</sup> case) also moved representations dated 30.07.2012, 31.01.2013, 30.07.2014, 31.01.2015, 29.12.2011, 09.02.2012

(Annexures A-2 & A-3 Colly) for redressal of grievance claiming the benefit of GPF Scheme, but in vain.

6. Aggrieved thereby, the applicants have preferred the instant OAs, claiming the benefit of GPF Scheme, on the following grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985:-

“(A) That the applicant is a citizen of India and is entitled for protection under Articles 14 and 16 of the Constitution of India.

(B) That as per Govt. of India instructions issued vide OM No.4/1/87/PIC-I dated 01.05.1987 and instructions issued by the KVS vide OM No.F.152-1/79-80/KVS/Budget/Part-II dated 01.09.1988 on the subject, the applicant is deemed to have come over to the pension scheme w.e.f. 01.01.1986, as applicable to the KVS employees and is entitled to the pension and retiral benefits under CCS (Pension) Rules, 1972.

(C) That the action/inaction of the Respondents result in denial of pension benefits to the applicant and thereby infringe her right to life guaranteed under Article 21 of the Constitution of India.

(D) That Hon’ble Supreme Court has already held that pension is not a bounty and is a statutory right.

(E) That the applicant explicitly never gave any communication to the KVS authorities before 31.01.1989 or later exercising the option to continue in the CPF Scheme.

(F) That the action/inaction of the Respondents in continuing the applicant under the Contributory Provident Fund Scheme, is in gross violation of Article 50 of the Education Code and fundamental rights of the applicant.

(G) That the inaction/consideration of the representations made by the respondents is hit by Wednesbury’s Principle and its corollary the Doctrine of Proportionality”.

7. Similarly, instead of reproducing the entire pleadings of other applicant, and in order to avoid repetition, suffice is to say that he has also urged the similar grounds to challenge the impugned action of the respondents in his connected OA.

8. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicants claimed

that since they were freshly recruited as TGT (Hindi) (in 1<sup>st</sup> case) and as Principal (in 2<sup>nd</sup> case), by way of direct recruitment, when the GPF Scheme was in force, so they are entitled to all the consequential benefits as per GPF Scheme. On the strength of aforesaid grounds, the applicants claimed the benefit of GPF Scheme on the basis of parity, in the manner indicated hereinabove.

9. The respondents refuted the claim of the applicants and filed their counter reply, wherein it was pleaded that the applicant (in 1<sup>st</sup> case) was initially appointed as Primary Teacher on 27.07.1978 and then as TGT (Hindi) on 11.08.1981. She completed her probation on 10.08.1983. KVS is an autonomous body registered under the Societies Registration Act, 1860 and applicant was allotted CPF A/c bearing No.3461. Applicant never objected/questioned her deduction as CPF till her first representation dated 23.08.2014 and subsequent representation dated 19.11.2014. They have also submitted that any representation at a belated stage, cannot give any fresh cause of action, particularly when the Ministry of HRD, Government of India has already clarified, vide communication dated 22.02.2006 that employees who entered service on or before 31.12.2003 and were governed by CPF Scheme, are not eligible for switch over to GPF-cum-Pension Scheme.

10. The case of the respondents further proceeds that once the applicants did not initially opt for GPF Scheme, so they cannot subsequently be permitted to switch over to GPF Scheme, in the garb of their fresh appointment by way of direct recruitment on the post of TGT (Hindi) (in 1<sup>st</sup> case) and as PGT (Physics)/Principal (in 2<sup>nd</sup> case). Mere joining in the higher post, in the same organisation, would not entitle them to opt for GPF Scheme. However, it was admitted that applicants filed representations claiming the benefit of GPF Scheme, but since they were not entitled to the same benefit, so their requests were not considered by the competent authority.

11. Virtually acknowledging the factual matrix and reiterating the validity of impugned action, the respondents have stoutly denied all other allegations and grounds contained in the OAs, and prayed for dismissal of the OAs.

12. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the OAs, the applicants filed their rejoinder. That is how we are seized of the matter.

13. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that the present OAs deserve to be allowed, for the reasons mentioned hereinbelow.

14. As is evident from the record, that the applicant (in 1<sup>st</sup> case) was initially appointed on the post of Primary Teacher on 27.07.1978. She opted for CPF Scheme, which was prevalent at that time. Subsequently, in the wake of fresh advertisement and after successfully completing the recruitment process and interview, she was appointed on the fresh independent and substantive post of TGT (Hindi) w.e.f. 11.08.1981 initially on probation for a period of 2 years, by way of direct recruitment. Similarly, applicant (in 2<sup>nd</sup> case) was initially appointed on the post of TGT on 17.07.1978. He also opted for CPF Scheme prevalent at that time. Consequently, in the wake of advertisement and after successfully completing the recruitment process and interview, he was appointed on the fresh independent and substantive post of PGT (Physics) w.e.f. 14.12.1981, by way of direct recruitment initially for a period of 2 years and then as Principal, on 03.07.2003, again by way of direct recruitment. The applicants successfully completed their period of probation and were confirmed by the competent authority. Admittedly, the GPF Scheme was in operation when the applicants were appointed on the new posts of TGT (Hindi)/PGT(Physics) and as Principal respectively, by means of direct recruitment. Thus, it would be seen, that the facts of the cases are neither intricate nor much disputed and falls within a narrow compass.



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

16. Having regards to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative in this regard.

17. What cannot possibly be disputed here is that, having completed the process of fresh recruitment, applicants were appointed on independent and substantive posts of TGT (Hindi)(in 1<sup>st</sup> case) and as PGT (Physics)/Principal (in 2<sup>nd</sup> case), by way of a direct recruitment, by virtue of fresh offer of appointment letters dated 10.07.1981 (Annexure A-3 Colly) (in 1<sup>st</sup> case) and dated 16.06.2003/03.07.2003 (in 2<sup>nd</sup> case). Their pay was accordingly fixed under the relevant rules. Concededly, the GPF Scheme was in operation at the time of fresh appointments of the applicants on independent and substantive posts as TGT (Hindi)/Principal. In that eventuality, indeed, applicants are also legally entitled to the benefit of existing GPF Scheme at the relevant time of their appointment as TGT (Hindi) (in 1<sup>st</sup> case) and as Principal (in 2<sup>nd</sup> case) by way of direct recruitment. The mere fact that applicants have also served as Primary Teacher/TGT and were earlier governed

by CPF Scheme, ipso facto, is not a ground, much less cogent, to deny the benefits of GPF Scheme prevalent at the time of fresh appointment of applicants on an independent and substantive posts of TGT (Hindi)/Principal, by way of direct recruitment. This matter is no more *res integra* and is now well settled.

18. 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, 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 (as in the instant cases), then the applicants (therein) were entitled to the benefit of GPF Scheme. The judgment of Hon'ble Delhi High Court 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.

19. There is yet another aspect of the matter, which can be viewed entirely from a different angle. It is not a matter of dispute that a similarly situated person **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.

20. 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.”

21. Again, same view was reiterated by this Tribunal in cases **Dr. B. Shyam Prasad Raju Vs. NCERT** in **OA No.100/2416/2015** decided on 25.10.2016 and **Hoshiar Singh Vs. U.O.I. & Others** in **OA No.3112/2013** decided on 19.09.2016, **Dr. B. Shyam Prasad Raju Vs. NCERT** in **OA No.100/2416/2015** decided on 25.10.2016 and **B.C. Tyagi Vs. U.O.I. and Others** in **OA No.100/2073/2014** decided on 08.11.2016.

22. In this manner, once the same benefits of GPF and Pension Scheme was granted to the similarly situated persons, then the same very benefit cannot possibly be denied to the applicants 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.

23. Therefore, the applicants are also held entitled to the benefits 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 argument of the respondents *stricto sensu* deserve to be ignored. The indicated ratio of law laid down by Hon'ble Apex Court, Hon'ble High Court of Delhi and of this Tribunal is *mutatis mutandis* applicable to the present controversy and is a complete answer to the problem in hand.

24. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

25. In the light of the aforesaid reasons, OAs are hereby accepted. Applicants are held entitled to be governed by GPF-cum-Pension Scheme with effect from their joining the

fresh independent substantive posts of TGT (Hindi) (in 1<sup>st</sup> case)/Principal (in 2<sup>nd</sup> case) with all consequential benefits.

However, the parties are left to bear their own costs.

Let a copy of this order be placed in the connected file.

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

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**  
**09.12.2016**

Rakesh