

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.100/2073/2014

New Delhi this the 8th day of November, 2016

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

B. C. Tyagi, Aged-58 years,
S/o Shri Desh Raj Singh Tyagi,
Working as PGT (Geography) in
K.V., AGCR Colony, New Delhi.
R/o. AE-167, Avantika,
Ghaziabad (U.P.)

.....Applicant

(Argued by: Shri Yogesh Sharma, 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.
3. The Deputy Commissioner (Admn.)
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.
4. The Finance Officer,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.

.....Respondents

(By Advocate : Mr. S. Rajappa)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The epitome of the facts and material, which needs a
necessary mention for the limited purpose of deciding the

instant Original Application (OA), and emanating from the record, is that, initially the applicant, Shri B.C. Tyagi was appointed as Trained Graduate Teacher (TGT) (Hindi) on 06.11.1984 in Kendriya Vidyalaya Sangathan (KVS). Subsequently, in the year 1989, KVS invited applications for the post of Post Graduate Teacher (PGT) (Geography) from open market, by way of direct recruitment. The applicant fulfilled all the eligibility criteria, and he applied for the post of PGT (Geography). He was duly selected and was offered the appointment of PGT (Geography), vide order dated 07.02.1992 (Annexure A-7). He accepted the offer and joined on fresh substantive post of PGT (Geography) on 11.02.1992 in KVS.

2. The case set-up by the applicant, in brief, insofar as relevant, is that, fresh appointment to the post of PGT (Geography) was a direct recruitment and there was no concern with his earlier post of TGT (Hindi). At the time of fresh appointment as PGT (Geography), General Pension Fund (GPF)-cum-Pension Scheme was in operation but KVS continued treating him in the old Contributory Pension Fund (CPF) Scheme.

3. Finding no alternative, the applicant submitted his representation dated 14.02.1996, to treat him under GPF-cum-Pension Scheme, as he was freshly appointed on the substantive post of PGT (Geography), which was duly forwarded by the Principal of KVS, vide letter dated

22.02.1996, but the appropriate authority has not decided the same, despite various reminders.

4. Thereafter, in compliance of the order passed on 24.10.2013 in **OA No.3035/2012** (Annexure A-13) of this Tribunal, the applicant again submitted a detailed representation dated 08.11.2013 (Annexure A-14), but the same was not duly considered and rejected, in a casual manner vide impugned orders dated 11.03.2014 (Annexure A-1) and dated 20.04.2012 (Annexure A-1 Colly) by the competent authority. The applicant has also claimed the parity on the basis of case of **Amit Mukherji and Others Vs. U.O.I. & Others** in **OA No.1437/2009** decided on 12.04.2010 (Annexure A-11), by this Tribunal. Thus the claim/representation of the applicant was stated to have been illegally rejected, vide impugned orders (Annexure A-1) and (Annexure A-1 Colly) by the competent authority.

5. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned orders on the following grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985:-

“a) That, this is not a case of switch over from CPF Scheme to GPF cum pension scheme as stated in the impugned order but this is a case in which the respondent in 1992 when the applicant was fresh appointed as PGT (Geography) wrongly implemented the CPF Scheme.

b) That, the action of the respondent is not only illegal but also vide ab-initio to the effect that when the Govt. of India close the CPF Scheme w.e.f. 01.10.1986 in such situation when the applicant was fresh appointed in 1992 there was no CPF Scheme was available inspite of that the respondents illegally and in arbitrary manner treating the applicant governed by CPF Scheme which is not tenable in the eyes of law.

c) That, the respondents passed the impugned order dated 20.04.2012 and rejected the request of the applicant by applying the order dated 22.02.2006 passed by the Ministry of HRD which is totally wrong as the Ministry of HRD order dated 22.02.2006 has been issued on different issue in respect of counting of the past service for those employees who have been taken up new appointment in another Ministry after 01.01.2004. It is submitted that infact in the circular dated 22.02.2006 it is clearly stated that "those employees who were already in service on or before 31.12.2003 and who were governed by the all GPF cum pension scheme will continue to be governed by the same set of rules" and therefore, the applicant who was fresh appointee in 1992 governed by GPF cum pension scheme will continue to be governed by the same scheme and therefore the whole action of the respondents rejecting the case of the applicant on the basis of Ministry of HRD order dated 22.02.2006 is totally illegal.

d) That, whole action of the respondents is illegal, arbitrary, discriminatory and without any reason and justification and therefore, in such circumstances the impugned order is liable to be quashed.

e) That, the respondents relied the judgment passed by the Hon'ble Supreme Court in Smt. Jaspal Kaur case but the facts of that case are entirely different. It is submitted that in that case the employee seeking her conversation from CPF Scheme to GPF-cum-Pension Scheme, whereas, in present case of the applicant, the applicant was directly appointed as a fresh appointment to the post of PGT (Geography) on 11.02.1992 and in the year 1998 there was no CPF Scheme was available for any Govt. Servant and all the Govt. servant appointed after 1987 are automatically governed by the GPF cum Pension Scheme but the respondents totally illegally and arbitrary manner applied the CPF Scheme on the applicant and therefore, the judgment of the Hon'ble Supreme Court is applicable at all in the present case of the applicant.

f) That, the impugned order dated 11.03.2014 has been passed by the respondent no. 4 in spite of fact the applicant submitted his representation to the Commissioner, KVS i.e. the respondent no. 2 in the present OA and the Commissioner KVS is the competent authority to consider the issue involved in the present case and therefore, the order dated 11.03.2014 is liable to be quashed on this sole ground."

6. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claimed that since he was freshly recruited as PGT (Geography), by way of direct recruitment, when the GPF Scheme was in force, so he is entitled to all the consequential benefits as per GPF Scheme. On the strength of aforesaid grounds, the applicant seeks to quash the impugned orders, in the manner indicated hereinabove.

7. The respondents refuted the claim of the applicant and filed the counter reply, wherein it was pleaded that the applicant initially joined as TGT (Hindi) on 06.11.1984 and he continued availing the CPF Scheme by giving his option on the previous post. As he joined as PGT (Geography) in the year 1992, and since he was availing the CPF Scheme, so he is not entitled to the benefit of GPF Scheme even after his fresh recruitment on the new post of PGT (Geography).

8. According to the respondents, since the applicant did not initially 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 PGT (Geography). Mere joining in the higher post, in the same organisation, would not entitle him to opt for GPF Scheme. However, it was admitted that the applicant filed representation claiming the benefit of GPF Scheme, but since the claim of the applicant was not accordable, under the current set of rules, so his request was rightly negated by the competent authority. Virtually acknowledging the factual matrix and reiterating the validity of impugned orders, the respondents have stoutly denied all other allegations and grounds contained in the OA, and prayed for its dismissal.

9. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the

OA, the applicant filed the rejoinder. That is how we are seized of the matter.

10. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter, we are of the firm view that the present OA deserves to be allowed, for the reasons mentioned hereinbelow.

11. As is evident from the record, that the applicant was initially appointed on the post of TGT (Hindi) w.e.f. 01.11.1984. 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 fresh independent and substantive post of PGT (Geography) w.e.f. 07.02.1992, by way of direct recruitment. Admittedly, the GPF Scheme was in operation when the applicant was appointed on the new post of PGT (Geography), by means 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.

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

13. 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.

14. What cannot possibly be disputed here is that, having completed the process of fresh recruitment, applicant was appointed on an independent and substantive post of PGT (Geography), by way of a direct recruitment, by virtue of fresh offer of appointment letter dated 07.02.1992 (Annexure A-7). His pay was accordingly fixed under the relevant rules. Concededly the GPF Scheme was in operation at the time of appointment of the applicant on an independent and substantive post as PGT (Geography). In that eventuality, indeed, the applicant is also legally entitled to the benefit of existing GPF Scheme at the relevant time of his appointment as PGT (Geography) by way of direct recruitment. The mere fact that the applicant has also served as TGT (Hindi) and was also 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 on an independent and substantive post of PGT (Geography), by way of direct recruitment. This matter is no more *res integra* and is now well settled.

15. 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, 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.

16. 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.

17. Aggrieved thereby, the ***Writ Petition (C) 8151/2016*** titled ***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.”

18. 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.

19. In this manner, once the same benefit of GPF and Pension Scheme was granted to the similarly situated persons, 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 held 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

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.

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

22. In the light of the aforesaid reasons, OA is hereby accepted. The impugned orders dated 11.03.2014 (Annexure A-1) and dated 20.04.2012 (Annexure A-1 Colly) and all other communications adversely affecting the right of the applicant, in this regard, are hereby set aside. Applicant is held entitled to be governed by GPF-cum-Pension Scheme with effect from his joining the independent substantive post of PGT (Geography) with all consequential benefits. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
08.11.2016

Rakesh