

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2931/2016

Reserved on:01.11.2017
Pronounced on:06.11.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

Dr. Nawal Kishore Mishra, Aged about 60 years,
s/o late J.K.B. Mishra,
Permanent resident of
Vaidehi Apartments,
Flat No.2A, Lohia Path,
B.V. College, Patna-800 014.
(Retired as PGT (History)
KV No.2, Baley Road,
Patna,Bihar). ...Applicant

(By Advocate: Sh. R.N. Singh with Sh. K.M. Singh)

Versus

Union of India through:

1. The Secretary,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi – 110 001.
2. Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi
(Through: The Commissioner). ...Respondents

(By Advocate: Sh. S.Rajappa with Sh. Puran Chand)

O R D E R

The factual matrix given by the applicant in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, are that the applicant entered into

service under the respondents as Primary Teacher [hereinafter referred to as 'PRT'] w.e.f. 29.10.1983 and he was allotted Contributory Provident Fund [hereinafter referred to as 'CPF'] Scheme. It is submitted by the applicant that while serving as PRT, he applied for the post of Post Graduate Teacher [hereinafter referred to as 'PGT'] History, against the advertisement issued by respondent no.2 for direct recruitment. The applicant, along with other general candidates, who were not the existing employees, participated in the selection process and was selected and joined as such on 22.03.1990. After attaining the age of superannuation, the applicant retired as PGT (History) on 31.05.2016.

2. The case of the applicant is that he, having been appointed as PGT (History) against open selection process for direct recruitment on or after 01.01.1986, was entitled to be extended the benefit of GPF-cum-Pension Scheme with all consequential benefits as there was no CPF Scheme at that time. However, the respondents, without any fresh option from the applicant after being selected and appointed afresh as PGT (History), continued to accord the benefit of CPF Scheme to him and admittedly the same was an inadvertent

wrong on part of the respondents against which the applicant submitted a representation dated 16.05.2016 before the respondents, which has not yet been decided.

3. The applicant further submits that persons outside KVS, who had applied for direct recruitment in KVS, automatically got the benefit of GPF-cum-Pension Scheme whereas the applicant, who also got selected along with outsiders, has been denied the benefit of this Scheme and, thus, has been discriminated in an arbitrary manner. In support of his claim, the applicant has relied upon the order of Ernakulam Bench of this Tribunal in ***Johnson P John vs. The Assistant Commissioner, KVS & Ors.*** [OA No.457/2011 decided on 22.03.2012], which involves an identical issue as is involved in the present case and the said order of the Tribunal has been affirmed by High Court of Kerala in the case of ***The Deputy Commissioner, KVS & Ors. vs. Johnson P John*** [OP (CAT) No.597/2013 (Z) dated 13.08.2013]. It is also pertinent to mention here, applicant contends, that despite implementing the order of the Ernakulam Bench in ***Johnson P John's*** case (supra), the respondents have failed to take any decision on his representation. To buttress his case, the applicant

submits that his case is covered by the judgment of High Court of Delhi in ***A.P. Verma vs. NCERT*** [2013 (2) SCT 825]. He has also relied upon certain other decisions submitting that his case is fully covered by the said decisions, which are ***Hoshier Singh vs. Union of India & Ors.*** [OA No.3112/2013 decided on 19.09.2016]; ***Vijay Kumar Malik & Anr. Vs. Union of India & Ors.*** [OA No.4592/2015 and 7 others decided by common order dated 15.05.2017] and ***B.C. Tyagi vs. Union of India & Ors.*** [OA No.2073/2014 decided on 08.11.2016].

4. In view of the above submissions, the applicant submits that the action of the respondents in not extending him the benefit of GPF-cum-Pension Scheme as has been extended to similarly situated employees is arbitrary, illegal, unjust, discriminatory and violative of Articles 14 & 16 of the Constitution and, therefore, the present OA deserves to be allowed.

5. Despite having been granted sufficient opportunities to the respondents to file their counter affidavit, they have not filed the same. However, Sh. S. Rajappa,

learned counsel for the respondents argued the case opposing the claim of the applicant.

6. I have thoroughly gone through the pleadings as also the judicial pronouncements relied upon by the applicant in support of his claim and have carefully considered the arguments so advanced by the learned counsel for both the sides.

7. The main argument of the applicant in this case is that he was appointed to the post of PGT as a consequence of direct recruitment. On the date of his appointment as PGT, there was no scheme of CPF. As a matter of fact, the Scheme prevailing at that point of time was GPF-cum-Pension Scheme and, therefore, the applicant should have been covered under the GPF-cum-Pension Scheme and not the CPF Scheme to which he was a contributor when he joined the service as PRT in the year 1983. It was his contention that this matter has been unequivocally covered by several orders of the Tribunal, namely, **Hoshiar Singh vs. Union of India & Ors.** (supra); **Vijay Kumar Malik & Anr. Vs. Union of India & Ors.** (supra) and **B.C. Tyagi vs. Union of India & Ors.** (supra).

8. Learned counsel for the respondents, on the other hand, argued that the applicant had continued to contribute to CPF Scheme even when he had become a PGT as a consequence of direct recruitment. At no point of time he had given the option to discontinue the CPF Scheme and opt for GPF-cum-Pension Scheme and, therefore, the respondents have been correct in denying him the benefit of GPF-cum-Pension Scheme.

9. This argument of the respondents does not seem to be acceptable as it has nowhere been denied that the appointment of the applicant as PGT was through direct recruitment even though from among the PRTs, but it was a direct recruitment nevertheless, and if anyone who had joined that post as a consequence of direct recruitment, the only available Scheme was GPF-cum-Pension Scheme because CPF Scheme was not in existence for PGTs at that point of time. The continuation of contribution to CPF could be for several reasons. It could be on account of ignorance or it could also be on account of the fact that there could be an understanding that this contribution could be considered against the GPF-cum-Pension Scheme. The logic built up in the judgments placed before me seems in order and there is

no rebuttal to this from the side of the respondents. My view is also strength by the decision of this Tribunal in **Hoshiar Singh's** case (supra) wherein it has been observed as under:-

"6. We have considered the arguments put-forth by the learned counsel for the parties and have also gone through the pleadings and the documents annexed thereto. Admittedly, the applicant was appointed as a Principal in KVS on 14.08.2002 by way of an open advertisement. Although his initial appointment letter as Principal dated 14.08.2002 (Annexure A-7) stated that his appointment is on deputation basis but later in terms of the decision taken by the KVS in November, 2004, all such appointees of the year 2002 were reverted but the reversion order was withdrawn vide KVS circular dated 19.09.2007 (Annexure A-8) and consequently vide KVS office order dated 26.09.2007 (Annexure A-9), the applicant's service as Principal was regularized with effect from the date when he was appointed as Principal on deputation basis, i.e., 14.08.2002. Taking all these developments into consideration, we are of the view that for all practical purposes, the applicant's appointment as Principal on 14.08.2002 shall have to be construed as a fresh appointment on direct recruitment basis.

7. For all the direct recruits in KVS at various levels in the year 2002 the GPF-cum-Pension Scheme was automatically applicable. Therefore, we hold that the GPF-cum-Pension Scheme is applicable to the applicant from 14.8.2002 and till the date of his retirement on 31.08.2014. The applicant has already put in more than 12 years regular service as Principal and hence he is entitled for pension as per Rule 49 of CCS (Pension) Rules, 1972 having completed more than 10 years of qualifying service."

10. Having gone through the observation of the Tribunal in **Hoshiar Singh's** case (supra) relied upon by the applicant, which has been reproduced above as also taking into consideration findings of the Tribunal in other

cases and of High Court of Delhi and High Court of Kerala, referred to above, I am of the considered opinion that the case of the applicant is fully covered by the above decision and deserves to be allowed.

11. In view of the discussions in the foregoing paras and for the reasons given therein, the OA is allowed. The respondents are directed to extend the benefits of GPF-cum-Pension Scheme to the applicant considering his appointment as PGT on direct recruitment basis w.e.f. 22.03.1990. The exercise, as ordained above, be completed within a period of three months from the date of receipt of certified copy of this order. No costs.

(Uday Kumar Varma)
Member (A)

/AhujA/