

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.100/3084/2015

**Reserved On:05.01.2017
Pronounced On:06.01.2017**

HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Chandra Kumar Ojha, aged 58 years,
working as Principal, in K.V. Sangathan,
Posted in K.V.No.2, Aramapur, Kanpur
R/o K.V. No. 2, Arampur, Kanpur. ...Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Human Resources Development,
Shastri Bhawan, New Delhi
2. The Secretary,
Ministry of Finance, Department of Expenditure,
Govt. of India, North Block, New Delhi
3. Kendriya Vidyalaya Sangathan,
Through the Commissioner,
18, Institutional Area,
Shahzed Jeet Singh Marg,
New Delhi.
4. The Finance Officer,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahzed Jeet Singh Marg,
New Delhi-110016. ...Respondents

(By Advocate: Shri S. Rajappa)

ORDER

The applicant has filed this OA claiming the following reliefs:-

“(1) That the Hon'ble Tribunal may further graciously be pleased to pass an order declaring to the effect that the whole action of the respondents applying the CPF Scheme on the applicant on his fresh appointment as Principal in the year 2002 is void ab initio as in the year 2002 CPF Scheme was not in operation for fresh appointment and consequently, pass an order directing the respondents to treat the applicant as governed by GPF-cum-Pension Scheme from the date of fresh appointment to the post of Principal with all consequential benefits, by way of extending the benefit of Hon'ble

Tribunal, Principal Bench judgment dated 25.03.2014 in OA No.1027/2014 and OA No.1039/2014 (Annexure A-2).

(ii) Any other relief which this Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the cost of litigation."

2. The facts, in brief, are that the applicant was initially appointed as Trained Graduate Teacher (TGT) on 06.08.1979 in Kendriya Vidyalaya Sangathan (KVS) and was later on appointed to the post of Post Graduate Teacher (PGT) (Biology) w.e.f. 04.09.1984. Subsequently, he applied for the post of Principal and was called for screening test and interview. Finally, he was appointed on the said post w.e.f. 05.07.2002 against direct recruitment quota and is governed by the GPF Scheme as after 1.1.1986 there was no CPF Scheme. Till then he is working on the said post as Principal, KVS.

3. According to the applicant, in the year 1986 options were invited from all the Government servants whether they want to come over to the General Pension Fund (GPF)-cum-Pension Scheme or to be treated under the old Contributory Pension Fund (CPF) Scheme. Applicant had not submitted any option to continue under the CPF Scheme. Afterwards, he came to know that on 26.11.2012 and 05.12.2012 meetings of Finance Committees were held for grant of permission to CPF optees to switch over from CPF to GPF-cum-Pension Scheme who were appointed on direct recruitment on or after 01.01.1986 to 31.12.2003. Hence, he submitted that he be also extended the benefit of GPF Scheme, as granted to one similarly situated person, namely, Shri Johnson P. John, PGT (Physics), K.V. No.1, Pollakad who filed **OA No.457/2011** before the Ernakulam Bench of the Tribunal. The said OA was allowed by the Tribunal. Thereafter, KVS challenged the said order before the Hon'ble

High Court of Kerala in **OP (CAT) No.597/2013**, which was dismissed by the Hon'ble High Court on 13.08.2013. That means the judgment of the Tribunal has attained the finality, as the relief of GPF has been extended to the applicant in **OA No.457/2011** (supra).

4. He has also relied upon the judgment passed by the Principal Bench of this Tribunal in **OA No.1027/2014** and **OA No.1039/2014** extending the same very benefit of GPF Scheme. After relying upon various judgments of this Tribunal, applicant submitted a detailed representation to the respondents on 16.04.2015, which was forwarded to the Commissioner, KVS Headquarters, New Delhi, for extending him GPF benefits, but till date no decision has been taken on it. He has further submitted that his case is fully covered by the latest judgments of the Tribunal in **OA No.100/2073/2014 - B.C. Tyagi Vs. UOI & Others** decided on 08.11.2016 and **OA No.100/1865/2015** with **OA No.100/1987/2015 - Jaishree Singh Tomar and Another VS. The Commissioner KVS & Others** decided on 08.12.2016. The operative part of the order passed in **OA No.100/1865/2015** (supra), reads as under:-

“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 1st case)/Principal (in 2nd case) with all consequential benefits. However, the parties are left to bear their own costs.

5. The respondents filed their reply denying all the pleas taken by the applicant and submitted that KVS is an autonomous body and in 51st Meeting of BOG, KVS held on 31.5.1988, it was decided that KVS will implement *mutatis mutandis* the decision taken by Government of India with regard to change over from CPG to Pension Scheme vide OM dated 01.05.1987.

It was accordingly 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. The employees who would like to continue in CPF Scheme were, however, required to exercise a clear option to continue in CPF. Hence, they submitted that since the applicant did not initially opt for GPF Scheme at the time of initial appointment as TGT on 06.08.1979, so he cannot subsequently be permitted to switch over to GPF Scheme, in the garb of his fresh appointment on the post of Principal. 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 acceded to, so his request was rightly turned down by the competent authority.

6. The respondents heavily placed reliance on the judgment of Hon'ble Apex Court in case **K.V.S. & Others Vs. Jaspal Kaur and Others** in Appeal (Civil) No.2876/2007 vide judgment dated 06.06.2007, wherein has been held as under:-

“7. The last pay certificate issued to the respondent no.1 when she handed over charge on 23.5.1992 clearly indicate that CPF subscriptions of Rs. 130/- was being deducted and that she had opted for the pay of CPF Scheme and rate of subscription is Rs. 130/- for month and allotment of CPF account number 1889 was being transferred. On the face of these documents the CAT and the High Court should not have held that option was not exercised by the respondent no. 1. Pursuant to this Court's order the original 9 (OA No.3112/2013) service book of respondent no.1 was produced. Even on 10.6.2005 in the last pay certificate it has been stated that she had opted for the CPF Scheme. Similar is the position in the last pay certificate dated 19.4.2003 and the last pay certificate of 18.1.1982. All these documents establish that respondent no. 1 had exercised the option for the CPF Scheme. 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. The CAT and the High Court were not justified in talking a difference view.”

7. I have heard the learned counsel for the parties, gone through the record and the relevant judgments.

8. The respondents have repeatedly been drawing attention to the judgment of ***Japal Kaur and Another*** (supra) to deny the benefit of GPF Scheme to the applicant. The applicant has pointed out and differentiated his case from ***Jaspal Kaur's*** case. He strongly points out that his case is different and based on the facts of his case, later decision by Hon'ble Supreme Court in ***NCERT Vs. A.P. Verma***, shall fully apply to the case of the applicant in hand.

9. Applicant was appointed on the substantive post of Principal w.e.f. 05.07.2002, by way of direct recruitment. Moreover, the GPF Scheme was in operation when the applicant was appointed on the post of Principal, by means of direct recruitment. Hence, applicant is entitled to the benefit of GPF Scheme w.e.f. 05.07.2002. The mere fact that he has served the same department as TGT and PGT (Biology) is not a ground, to deny the benefit of GPF Scheme prevalent at the time of fresh appointment on the post of Principal, by way of direct recruitment.

10. Same very issue was decided on 25.02.2013 by the 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***. In that case it was held 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 were entitled

to the benefit of GPF Scheme. The judgment of Hon'ble Delhi High Court was upheld by Ho'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.

11. Similarly one **Krishan Murari Gupta** has filed **OA No.119/2014**. He was appointed as Professor by way of fresh recruitment. He filed the representations requesting the respondent-NCERT for treating him to be governed by GPF/Pension Scheme instead of CPF Scheme. However, his representations were rejected. Having relied upon the observations of Hon'ble High Court of Delhi in cases **A.P. Verma** and **A.K. Sacheti**, it was held that the petitioner was entitled to the similar benefit of GPF Scheme vide order dated 03.06.2016 by a Division Bench of this Tribunal. Thereafter, NCERT filed **Writ Petition (C) 8151/2016** in the case of **Krishan Murari Gupta** which was dismissed by Hon'ble High Court of Delhi on 6.09.2016. The operative part of the said order reads 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."

12. Moreover, once the same benefit of GPF and Pension Scheme was granted to the similarly situated persons, then the same very benefit cannot be denied to the applicant 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.

13. In view of the above discussion, I hold that the applicant is entitled to be governed by GPF-cum-Pension Scheme w.e.f. 05.07.2002 from his joining the substantive post of Principal under direct recruitment quota with all consequential benefits. The respondents are directed to pass necessary orders within a period of 2 months from the date of receipt of a copy of this order.

14. The OA stands allowed with the above directions. However, there will be no order as to costs.

(NITA CHOWDHURY)
MEMBER (A)

Rakesh