

**Central Administrative Tribunal
Principal Bench**

OA No. 4539/2014

Order Reserved on: 01.08.2016
Order Pronounced on: 25.10.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

1. Shri jagbir Singh
S/o Shri Maha Singh, Age 53
Attendant, PT. Deen Dayal Updadhyaya Institute
For Physically Handicapped,
4, Vishnu Digamber Marg,
New Delhi-110002
2. Sh. Parkaash Doubhal S/o Sh. A.N. Dobhal, Age 49
UDC, PT. Deen Dayal Updadhyaya Institute
For Physically Handicapped,
4, Vishnu Digamber Marg,
New Delhi-110002
3. Mrs. Kusum Sharma w/o Sh. A.N. Dobhal, Age 49
UDC, PT. Deen Dayal Updadhyaya Institute
For Physically Handicapped,
4, Vishnu Digamber Marg,
New Delhi-110002
4. Mr. Munna Ram S/o Sh. Ramjilal, Age 53,
MTS, PT. Deen Dayal Updadhyaya Institute
For Physically Handicapped,
4, Vishnu Digamber Marg,
New Delhi-110002
4. Mr. Munna Ram S/o Sh. Ramjilal, Age 53,
MTS, PT. Deen Dayal Updadhyaya Institute
For Physically Handicapped,
4, Vishnu Digamber Marg,
New Delhi-110002
5. Sh. Mukesh Chand S/o Sh. Bhagwana, Age 52
MTS, PT. Deen Dayal Updadhyaya Institute

For Physically Handicapped,
4, Vishnu Digamber Marg,
New Delhi-110002

6. Mrs. Sarla Devi W/o Late Sh. Noormashi, Age 50
MTS, PT. Deen Dayal Upadhyaya Institute
For Physically Handicapped,
4, Vishnu Digamber Marg,
New Delhi-110002
7. Sh. N. Sankariah
S/o Sh. N. Venkata Subbariah,
Age 50 years,
Assistant (Audit)
National Institute For Visually Handicapped
(Ministry of Social Justice & Empowerment)
116, Rajpur Road, Dehradun-248001
8. Sh. Ved Prakash,
S/o Shri Prem Singh,
LDC, Age 52 years,
National Institute For Visually Handicapped
(Ministry of Social Justice & Empowerment)
116, Rajpur Road, Dehradun-248001
9. Sh. Pratap Singh, S/o Sh. Shivram Singh,
Driver, Age 53 years,
National Institute For Visually Handicapped
(Ministry of Social Justice & Empowerment)
116, Rajpur Road, Dehradun-248001
10. Sh. Janak Raj Parcha
S/o Sh. Raghuvir Singh,
Asstt. Press Men, Age 45 years,
National Institute For Visually Handicapped
(Ministry of Social Justice & Empowerment)
116, Rajpur Road, Dehradun-248001
11. Sh. Sunil Ghosh S/o Sh. P.K. Ghosh,
Driver, Age 47 years,
Ministry of Social Justice & Empowerment,
Shastri Bhawan, New Delhi
12. Shri Rajkumar S/o Sh. Vakil Ram,
LDC, Age 46 years,
National Institute for the Orthopaedically,

Handicapped (NIOH), Kolkatta - Applicants
 (By Advocate: Mr. B.K. Barera)

VERSUS

1. Union of India through
 Secretary,
 Ministry of Social Justice and Empowerment,
 Department of Disability Affairs,
 Paryavarn Bhaan, CGO Complex,
 New Delhi
2. The Secretary,
 Ministry of Social Justice and Empowerment,
 Department of Disability Affairs,
 Paryavarn Bhaan, CGO Complex,
 New Delhi
3. Director,
 Pt. Deen Dayal Upadhyaya Institute for
 The Physically Handicapped,
 4, Vishnu Digamber Marg,
 New Dehli-110002
4. Director,
 National Institute for Visually Handicapped
 Ministry of Social Justice & Empowerment,
 116, Rajpur Road, Dehradun-248001
5. Director,
 National Institute for the Orthopaedically,
 Handicapped (NIOH),
 Ministry of Social Justice & Empowerment,
 Kolkatta
6. The Secretary,
 Ministry of Finance,
 Department of Expenditure,
 North Block, New Delhi - Respondents

(By Advocates: Mr. N.K. Aggarwal and Dr. Ch. Shamsuddin Khan)

ORDER

Dr. B.K. Sinha, Member (A):

In the instant Original Application filed under Section 19 of the Administrative Tribunals Act 1985, the applicants are aggrieved by the order dated 28.07.2014 of the respondent no.1 issued in consultation with the respondent no.6 declining the pensionary benefits under the GPF-cum-Pension Scheme (Old Pension Scheme).

2. The applicants, vide means of the instant OA, have prayed for the following reliefs:-

- “a) to quash the impugned order dated 28.07.2014 and directions to the respondents to extend the benefits of GPF-cum-Pension Scheme (Old Scheme) as per their terms of appointment;
- b) pass such other or further order as this Hon’ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case and in the interest of justice.”

3. The facts of the case, in very brief, are that the respondent no.1 started a pilot project called District Rehabilitation Centre (DRC). The applicants had joined on various posts under the DRC, Central Administrative & Coordination Unit (CACU) IPH Complex, New Delhi directly recruited by the respondent no.1 during the period 1985 to 1990. At the same time, a letter dated 04.07.1986 was issued by the Office of the Project

Director, DRC Scheme (CACU), IPH, holding that the rules and regulations, as contained in the enclosed bye-laws applicable to the employees of the IPH, New Delhi, as amended from time to time, will also apply *mutatis mutandis* to the employees directly recruited in the CACU/RRTCs. Bye-law 6(v) for Administration and Management of Pt. Deen Dayal Upadhyaya for the Physically Handicapped categorizes the posts in the Service to be either a “Permanent Post” that is a post carrying a definite rate of pay sanctioned without any limit of time or a “Temporary Post” that is a post carrying a definite rate of pay sanctioned for a limited time. Accordingly, the following rules/Central Govt. regulations in force in the IPH will be applicable to CACU/RRTCs:-

- “i) CCS (Temporary Scheme) Rules;
- ii) CCS (Leave Rules) 1972;
- iii) CCS (CCA) Rules 1965;
- iv) CCS (Conduct) Rules 1964;
- v) Leave Travel Concession;
- vi) Fundamental/Supplementary Rules;
- vii) CPF (Contributory Provident Fund) Rules (India) 1962 (Only for direct recruits)”

4. It is the case of the applicants that despite the approval for implementation of ‘Pension-cum-GPF Scheme’ was conveyed by the Ministry of Welfare vide their letter dated 02.02.1989 and the said Scheme is applicable to the IPH employees w.e.f. 02.02.1989, the

applicants, who were working in the DRC (CACU), New Delhi for the last 15 to 20 years, were not getting the facilities available to the employees working in the IPH, i.e., Pension, GPF, DCRG and Advance facilities; whereas it should have been automatically extended to them. Some of the similarly placed persons had taken up the matter before this Tribunal in OA No. 711/2005, which was decided by the order dated 01.02.2006 wherein the issue was that whether the applicants, who had been employees of DRC (CACU), were the Central Government employees or not. The arguments on both sides were similar to the arguments advanced by the applicants and the respondents in the instant OA. The respondents in the said OA had submitted that the applicants were governed by CPF Rules 1962 and, therefore, the question of applicability of rules applicable to employees of IPH to employees of CACU did not arise. The applicability of the rules to employees of DRC, CACU is subject to order dated 04.07.1986, which does not provide for GPF-cum-Pension Scheme instead the CPF Rules 1962 are applicable. It had been further argued that CACU is not a part of the Central Government. After taking note of two earlier decisions in OA No. 1241/1996 of Calcutta Bench and 307/2001 of Mumbai Bench wherein

applicants wherein applicants were directed to be treated as Central Government employees with all consequential benefits, this Tribunal in OA No. 711/2005, while taking note of the fact that the matter was subjudice before the Hon'ble Supreme Court, directed the respondents to decide the matter as per the decision of the Hon'ble Supreme Court, once it is delivered. For the sake of greater clarity, we extract paras 9 and 10 from the order which read as under:-

“ 9. Applicants have relied on 2 judgments given in favour of employees of RRTC and CACU by Mumbai and Calcutta Bench but counsel for the respondents informed us that the matter is now pending before Hon'ble Supreme Court to decide the issue whether these employees can be treated as Central Government employees or not. In the judgment given by Calcutta Bench applicants therein were treated to be as Central Govt. employees, we, therefore, feel that this OA will have to await the outcome of judgment by Hon'ble Supreme Court as that would be binding on both sides.

10. Accordingly, this OA is disposed of with a direction to the respondents that ultimately whatever is decided by Hon'ble Supreme Court shall be binding on applicants as well. After the judgment is passed by Hon'ble Supreme Court and received by respondents they shall pass speaking orders within four months thereafter deciding the case of applicants as well as by duly informing all the applicants. Applicants would have liberty to challenge those orders, if they are still aggrieved and are so advised.

11. With the above directions, the OA stands disposed of. No order as to costs.”

5. The Hon'ble Supreme Court in Civil Appeal No. 7999/2002 along with Civil Appeal Nos. 4313-4319/2003 took note of the arguments of both parties as also of the earlier decisions of the Calcutta Bench and Karnataka Bench at Bangalore of the CAT and also judgment of Division Bench of the Hon'ble Calcutta High Court and held as under:-

“In a case of this nature, however, we think it expedient to invoke our jurisdiction under Article 142 of the Constitution of India. The Central Government has categorically stated that those employees who would opt for employment under the Central Government may be accommodated in its ongoing projects. Pursuant thereto or in furtherance thereof, the concerned employees who have affirmed affidavits showing inclination to serve any project under the Central Government, may be absorbed by it. Services of those employees may be utilized by the Central Government in any of its project. They would, however, be continued to be paid salaries on the same scale of pay. Their experience may also be considered for the purpose of determination of their seniority, subject of course to any rule which is in operation in the field. All other financial benefits including those of superannuatory benefits should be protected. It is, however, clarified that such employment under the Central Government would be temporary and personal posts which would come to an end with the retirement of the concerned employees.

Similarly those Respondents who have opted for their employment with the State of West Bengal or the State of Karnataka, as the case may be would be absorbed by the States of West Bengal and Karnataka, as the case may be, on the same terms and conditions as referred to hereinbefore.”

6. The Hon'ble Supreme Court further held as under:-

“Keeping in view the nature of order passed by us, it is clarified that the same shall not be treated as a precedent. We also make it clear that these orders have been passed by us keeping the stand taken by the parties. These appeals are disposed of with the aforementioned directions. There shall be no order as to costs.”

7. The applicants have argued that in terms of the afore order of the Hon’ble Supreme Court, the applicants are entitled to be treated as Central Government with GPF and pensionary rights. The applicants have relied upon the case of **Nirmala Venkateswaran vs. Govt. of India & Anr.** (WP No. 21935/2002) decided on 15.11.2006 wherein the said Nirmala Venkateswaran had been given all the benefits of regular Central Government employee, including pensionary benefits based upon the decision of the Hon’ble Supreme Court in **Dr. Uma Agarwal vs. State of Uttar Pradesh & Anr.** (1999)3 SCC 438. The case of the said Nirmala Venkateswaran was that she had been appointed on regular basis and continued in service thereby getting entitled to pension as per bye-laws. Her age of retirement had also been fixed at 60 years. In para 10 thereof, the Hon’ble Madras High Court had found as under:-

“10. The Pension Rules of the Institute for Physically Handicapped clarifies that the employees of the Institute shall be eligible to pensionary benefits and GPF and gratuity as per the Central Government Rules. It further says that on

completion of one year of service, the employee will be eligible for admission to the Institute's GPF Scheme. It further says that the present CPF Scheme will continue for the employees, existing on the date these bye-laws are made effective i.e. 2nd May, 1999 in the IPH, who do not opt for GPF scheme and opt to continue under CPF Scheme. In the instant case, the petitioner has been addressing letters to the authorities that she has opted to receive GPF and Pension Scheme. No doubt, the letter of the petitioner is dated 01.05.1998 and it was made on receiving the communication with regard to her retirement."

8. The Hon'ble High Court also took note of the fact that the work on preparation of pension papers had commenced after the retirement of the petitioner, whereas it should have taken place at least six months in advance. The Hon'ble High Court had directed payment of pensionary dues in the following terms:-

"14. Considering all these facts, this Court is of the opinion that it is a fit case to direct the respondents to settle the pension to the petitioner immediately as provided under the Rules and particularly, in view of the Bye-law vii of the Institute for Physically Handicapped, the pension is to be paid with interest at 9% per annum, from the date of commencement. The respondents shall comply with the above direction within 30 days from the date of receipt of a copy of this order. The amount of Rs.2,79,472/- which is paid to the petitioner shall be returned immediately to the respondents soon after the petitioner receives the pension amount and there shall be no interest payable by her as she is in the victim of litigation. Copy of this order shall be sent to the Cabinet Secretary of the Government of India, so that he shall take necessary steps for peaceful living of all the Government servants retiring from service."

9. An SLP (Civil) Nos. 19803/2008 against the afore order of the Hon'ble High Court, the applicants submits, was disallowed vide order dated 22.08.2008 with the following observations:-

“No ground is made out for our interference under Article 136 of the Constitution. The special leave petition is dismissed.”

10. In another similarly situated case titled as **Union of India & Ors. Vs. P.S. Srinivas & Anr.** (WP No. 33040/2013 and M.P. No.1/2013) wherein the respondents had sought for quashing of the order of this Tribunal made in OA No. 534/2011 dated 25.06.2012 making a reference to the case **Nirmala Venkateswarah vs. Govt. of India & Anr.** (supra), the Hon'ble High Court at Madras was pleased to dismissed the Writ Petition.

11. The applicants have further submitted that the said pilot project had been closed w.e.f 1.4.2006. The applicant nos. 1 to 6 were appointed in PT. Deen Dayal Upadhyaya Institute for Physically Handicapped with the respondent no.3 with the approval of the respondent no.1. The applicant nos. 7 to 10 were similarly appointed too with the respondent no.4. The respondent no.1 had given clarification regarding Service conditions of

redeployment/adjustment of PD-DRC/RRTC staff in new organization on the basis of which the respondent no.3 issued an order dated 24.01.2008 which is being extracted below for the sake of clarity:-

“ORDER

In pursuance of clarification vide letter No.F.14-11/2007-NI-I dated 11th January, 2008 received from Ministry of Social Justice & Empowerment, following decision have been taken in the matter of re-deployment/readjustment of DRC staff with effect from the date of their joining in the Institute.

- 1) As per condition of offer of appointment the probation period of readjusted employees of DRC has been waived off.
- 2) Earned Leave/Half Pay Leave (Commuted) at their credit as on date of joining shall be transferred to the Institute.
- 3) Date of increment and pay scale shall be same as was in DRC.
- 4) Benefit of counting of past service shall be counted for superannuation benefits.
- 5) The re-adjusted staff shall be governed by the New Pension Scheme from the date of their joining in the Institute.”

12. The respondent no.1 had taken a view that the applicants in the OA No. 711/2005 were identically placed as the said Nirmala Venkateshwaran and therefore, they were entitled to the same benefits as the employees of the respondent no.3. However, the Ministry of Finance held that the benefits given to the said

Nirmala Venkateshwaran were personal to her and could not be extended to others. Therefore, the applicants have approached this Tribunal in the present OA for redressal of their grievances.

13. The principal ground adopted by the applicants is that they are identically placed as employees of IPH, who have been getting the benefits as sought w.e.f. 02.02.1989 as also the said Nirmala Venkateshwaran. The applicants have relied upon the cases of the Hon'ble High Court at Madras in **Nirmala Venkateswarah vs. Govt. of India & Anr.** (supra), SLP (Civil) Nos. 19803/2008 and **Union of India & Ors. Vs. P.S. Srinivas & Anr.** (supra).

14. The respondents have filed a counter affidavit admitting such averments which are in factual matrix while rebutting others. The respondents submitted that in 1984-85, the respondent no.1 started a pilot project called DRC with funding from National Institute for Disability Rehabilitation & Research (NIDRR, USA) based organization for establishment of model for providing comprehensive rehabilitation services in rural areas. Since 1995, the DRC was being supported by the respondent no.1 from non-plan grants. It has since been

closed w.e.f. 01.04.2006 on completion of the task as a Central Scheme. This project has various components like CACU at New Delhi, RRTC at Lucknow, Mumbai, Cuttack, Chennai and 11 DRCs in ten States. The staff in the DRC was appointed by the respective State Governments and governed by the State Government rules. While the staff of PD-DRC office and RRTCS was appointed by the Project Director, DRC Scheme/Director, IPH, New Delhi. The direct recruits in CACU and RRTCS were appointed in the given pay scales plus usual allowances as admissible under the rules in force in the DRC Scheme. For administrative convenience, the service rules and regulations as in force at that time in the IPH were applied *mutatis mutandis* to PD DRC-CACU/RRTC employees, which included CPF Rules 1962. The GPF cum Pension Scheme has been introduced in the IPH vide Ministry's letter dated 02.02.1989. The Bye-laws of the Institute were also permitted to be revised accordingly. The respondents have emphatically submitted that the GPF-cum-Pension Scheme has never been made applicable to the employees of CACU/RRTC and they continued to be governed by CPF Rules 1962 till the end of the project.

15. The second point relates to the judgments of different courts on which the applicant has placed reliance. It is submitted that similarly placed employees of DRC Midnapore and Mysore I 1996-1999 moved the Hon'ble Courts seeking Central Government employees status. The Hon'ble High Courts of Calcutta and Bangalore ruled that the appointees be treated as Central Government employees after which an appeal was filed by the Union of India against the said ordes in the Hon'ble Supreme Court of India, which was pleased to grant SLP (CA No.7999/02 with 4313-4313/03). While the aforesaid matter was pending before the Hon'ble Supreme Court, the directly recruited employees of CACU moved an Application bearing No. OA No. 711/2005 before CAT, Principal Bench, New Delhi seeking benefits of pension and gratuity etc. on the grounds that such benefits had been extended to the employees of IPH. This Tribunal vide its order dated 01.02.2006 observed that orders dated 04.07.1986 of PD-DRC need to be read harmoniously with amended bye-laws of IPH made effective from 2.2.1988 and held that "OA would have to await the outcome of the judgment of the Hon'ble Supreme Court as that would be binding on both the sides. Accordingly, the said OA was disposed of with the

direction to the respondents that ultimately whatever is decided by the Hon'ble Supreme Court, shall be binding on the applicants as well. The Hon'ble Supreme Court vide judgment in CA No. 7999/02 and CA No. 4313-19/2003 held that the DRC employees were not Central Govt. employees but project employees entitled for continuation of service in other projects of the Central/State Government with protection of pay and existing superannuatory benefits. The Hon'ble Supreme Court had passed the orders in exercise of special jurisdiction under Article 142 of the Constitution with a clear stipulation that it was not to be treated as precedent in other cases. Thus, it is clear that the Hon'ble Supreme Court emphatically has not accepted the plea of the DRC employees for being treated as Central Government employees. The learned counsel for the respondents submitted that the afore decision of the Hon'ble Supreme Court put paid to the plea of the DRC employees and cannot be re-invoked. The directives of this Tribunal in OA No. 711/2005 has attained finality in light of the decision of the Hon'ble Supreme Court in CA No. 7999/2002 with 4313-4319/2003.

16. The third point submitted by the respondents is that the excessive reliance placed by the applicant upon

the case of Nirmala Venkateshwaran (supra) was quite misplaced. In this case, Nirmala Venkateshwaran had joined IPH, i.e., respondent no.1 controlled by the Government of India in pursuance of the notification issued on 28.11.1984. On 18.04.1986, the respondents issued a letter stating that all the Assistant Professors under the RRTC have been appointed on deputation and that their leave salary, pension contribution etc., are remitted to their parent organization on a regular basis. While so, the rules and regulations as mentioned in the Bye-laws applicable to the employees of the IPH, New Delhi were also placed before RRTCs and as per the Bye-laws for Administration and Management of the Institute for Physically Handicapped, the employees of the Institute are eligible for pension. Thus, the case of the Nirmala Venkateswaran was that she sought parity with the employees of IPH. The Hon'ble High Court had directed payment of pensionary dues. An SLP (Civil) Nos. 19803/2008 against the afore order of the Hon'ble High Court was also dismissed vide order dated 22.08.2008.

17. The argument of the respondent is that the benefits granted to Nirmala were in personam and cannot be extended to the applicants, as the decision of the Supreme Court was based upon a letter dated

01.05.1986 opting for the Scheme. The Hon'ble High Court of Madras had drawn a distinction with the order of the Hon'ble Supreme Court in Civil Appeal No. 7999/2002 and termed the case of Smt. Nirmala Venkateshwaran different to those of the appellants in CA. The respondents have also stated that the four conditions stated in the matter of **Bharat Sanchar Nigam Ltd. vs. Ghansham Das & Ors.**, (2011)4 SCC 374 are satisfied and reliefs granted to Smt. Nirmala Venkateshwaran were in personam.

18. In the fourth place, the respondents have also questioned the jurisdiction of this Tribunal as the applicants are working in the National Institutes which are autonomous bodies under the financial and administrative control of the Ministry of Social Justice & Empowerment. These are the societies registered under Societies Registration Act XXI of 1860. The respondents have, therefore, strongly pleaded that the case be dismissed.

19. The applicants have submitted the rejoinder restating the earlier averments in the OA.

20. We have carefully gone through the pleadings of the rival parties and the law citations so relied upon by them.

We have also patiently heard the oral submissions advanced by the learned counsels for the parties.

21. Since the question of jurisdiction has been raised by the respondents, it becomes a bounden duty of this Tribunal to settle this issue before taking up others. Jurisdiction, powers and authority of the Central Administrative Tribunal have been spelt out in Section 14 of the AT Act, 1985. For the sake of clarity, the relevant portion of the Act is being extracted as below:-

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or
 (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred in clause (c)] appointed to any defence services or a post connected with

defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation - for the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that

date by all courts (except the Supreme Court in relation to-

- (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and
- (b) all service matters concerning a person [other than a person referred to in clause (a) or clause(b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.”

22. It can be seen from the plain reading of the above provisions that there are two kinds of jurisdiction in CAT:

(i) inherent under Section 14(1) and other which is acquired under Section 14(2). A list of such bodies, which have become amenable to the jurisdiction of the CAT in a mode of acquisition includes statutory bodies under enactment of the Central Government autonomous organizations. Admittedly, such a society is a legal entity and a juristic person. However, employees of this society are not holders of civil posts and have to take the route of section 14(2) in order to become amenable to the jurisdiction of this Tribunal. We are swayed by the fact that a major part of the funding of the society is flowing through Government either by way of bilateral assistance or multilateral funding programmes. We also take into

consideration the fact that such matters relating to this very society have been adjudicated up to the level of the Hon'ble Supreme Court on the basic decision delivered by this Tribunal. We are of the firm opinion that the jurisdiction of this Tribunal over dispute under reference is not excluded. We need not spend any more time over the issue of jurisdiction now.

23. We come to the issue whether the applicants are entitled of GPF-cum-Pension or not. In this regard, we have already noted that the applicants have relied heavily upon two cases, namely, that of **Smt. Nirmala Venkateswaran** (supra) and of **Union of India & Ors. vs. P.C. Srinivas & Anr.** We have already traced background of the case and noted how the GPF-cum-Pension Scheme was extended to the employees of the IPH. Here, we also take note of the fact that there was no uniform method of appointment for the employees of CACU/RRTC and DRC. These employees were appointed by different methods and under differing service conditions. Employees of DRC were appointed by the State Government and their service conditions were governed by the State Government. The employees of CACU/RRTC were appointed by the Project Director, DRC. We have also noted that the employees of these

institutions claimed that they were the employees of the Central Government. Though, the Hon'ble High Court of Calcutta, upheld their stand, but the Hon'ble Supreme Court in CA NO.7999/2002 with CA Nos. 4313-4319/2003 emphatically held that these employees were not Central Government servants. We have also looked at the letter of appointment of the applicants where their claim is that they were appointed in temporary post in the given pay scale with usual allowances as admissible under the rules in force in Institute. However, the appointment letter dated 04.07.1986 spelling out the terms and conditions of service clarified the fact that Contributory Provident Fund Rules 1962 would be applicable to the employees of CACU/RRTC among other rules and regulations in force in IPH. Rule 4 of the CPF Rules 1962 spells out its eligibility conditions as follows:-

“(1) These rules shall apply to every non-pensionable servant of Government belonging to any of the Services under the control of the President who-

(a) has been admitted before these rules came into force to the benefits of the Contributory Provident Fund (India); or

(b) may be admitted by Government to the Fund after these rules come into force:”

24. It is clear from the above that this Scheme applies to such servant of Government belonging to any service under the control of the President who is non-pensionable category. A reverse of the same would also imply that every Government servant, who is in a non-pensionable establishment, shall be member of the CPF and shall be governed by the CPF Rules, 1962. In the instant case, applying this very logic indicates that the applicants were in non-pensionable scheme. We are further swayed by the consideration that the establishment was bilaterally/multilaterally funded and the scheme folded up w.e.f. 1.4.2006. Thereafter the bilateral/multilateral assistance funds were no longer available for paying the salary of the employees. In such project work, it is customary that the services of the employees against which they have been appointed, ceased to exist. The Government being a very considerate employer agreed to redeploy/adjust them in various institutions of the Ministry. However, we find that there is a clear contradiction between the demand of the applicants and the contents of the appointment letters. The employees have been paid their CPF dues, including the employees contribution. If the orders were to be reversed and employees were to be brought within

GPF-cum-Pension Scheme, the first problem would be that from which head they were to be paid for the past period for which they have already received payment of CPF and in the future. We have also considered the point that most of the applicants in this OA were also parties to OA No. 711/2005 for example Jagbir Singh, Mukesh Chand etc. Therefore, the order in OA No. 711/2005 is also applicable to the applicants in the instant OA who were as much bound by it. In this OA, we have already taken note of the order in OA No.711/2005 (supra) wherein the matter had been left to the decision of the Hon'ble Supreme Court in SLP pending before it. The Hon'ble Supreme Court, after having taken a note of all the circumstances, had ordered as has already been reproduced in paras 5 and 6 of this order. We can infer from these paras that the Hon'ble Supreme Court directed that the employees, who had so opted, were to be adjusted either in the State Government or in the Central Government as per their choice in any of the ongoing projects. The Hon'ble Supreme Court had never ordered that they should be absorbed into regular Government service at par with other regular employees. The order further says that their salaries and other financial benefits, including their superannuatory

benefits were to be protected, but the employment against temporary and personal posts would come to an end with the retirement of the employees. It was also clarified that since this order was being made by invoking Article 142, it would not act as a precedent. Thus, the order of the Tribunal in OA No. 711/2005 stands complied with and nowhere does the order of the Hon'ble Supreme Court says that they should be allowed to switch over to CCS (Pension) Rules, 1972.

25. Now, we take up the issue of applicability of the case of **Nirmala Venkateswaran vs. Government of India & Ors.** (supra). Here the said NIrmala Venkateswaran was a graduate in Zoology with a diploma in Occupational Therapy. She joined the Institute of Physically Handicapped in pursuance of the Government notification dated 28.11.1984 as Assistant Professor in Occupational Physiotherapy. This notification disclosed that all the posts would carry Central Government pay scales and allowances. Thus, her case was that she was appointed on regular basis and she continued in service with the respondents and therefore, she was entitled to pension as per bye-law 6(vii) of IPH which provides as follows:-

“6(vii) Pension and GPF

The employees of the Institute shall be eligible to pensionary benefits and GPF and gratuity as per the Central Govt. Rules. On completion of one year of service, the employee will be eligible for admission to the Institute's GPF scheme. The Present GPF scheme will continue for the employees, existing on the date these Bye-laws are made effective i.e. 2nd May, 1986 in the Pt. DDUIPH, who do not opt for GPF Scheme and opt to continue under the CPF Scheme.”

26. The Hon'ble High Court found that the post of the petitioner carried central government pay scales and allowances and finally held that it is a fit case to direct the respondents to settle the pension to the petitioner.

27. In the instant case, the facts differ from the afore case. In the instant case, the applicants were appointed under Project which continued till 01.04.2006 and thereafter as per the orders of the Hon'ble Supreme Court in CA No. 7999/2002, the employees were ordered to be absorbed in various projects. While some of them remained with the State Government, some others, including the applicants were absorbed by the respondent-IPH. We have already taken note of the rules of IPH which deliberately provided for GPF-cum-Pension

Scheme. In this regard, we also take note of the fact that Rule 2 of CCS Pension Rules provides as under:-

“2. Application

Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before 31st day of December, 2003 including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to -

(a)	railway servants ;
(b)	persons in casual and daily rated employment ;
(c)	persons paid from contingencies ;
(d)	persons entitled to the benefit of a Contributory Provident Fund ;
(e)	members of the All India Services ;
(f)	persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries ;
(g)	persons employed on contract except when the contract provides otherwise ; and
(h)	persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

28. We have also taken note of the fact that the persons recruited under CPF Rules 1972 and since then there has been no order for a switch over to the CCS (Pension) Rules, thereby the entitlement of the applicants to CPF continued and are excluded from the Pension Scheme.

As per sub-clause (d) above, it is clear that the case of Nirmala Venkateswarn, who had opted for the Pension Scheme on 01.05.1988, is not applicable to the facts of the instant case.

29. In conclusion, we can say that all the applicants were appointed in a project which has since closed w.e.f. 1.4.2006, their attempt to be declared Central Government servants had met with frustration due to the judgment of the Hon'ble Supreme Court in CA No. 7999/2002 with CA Nos. 4313-4319/2003 dated 10.11.2006. Moreover, the decision in OA No. 711/2005 reached a fulfillment with the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court has never directed that the pension be given to the applicants in the instant case. Moreover, we also find that the decision in the case of Nirmala Venkateswar by the Madras High Court differs in facts to the instant case. Hence, we find that there are absolutely no grounds for this Tribunal to interfere with the order dated 28.07.2014. As such, the OA is dismissed. No costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)