

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.201/00706/2017

Jabalpur, this Thursday, the 15th day of November, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Girija Shankar Purbia,
S/o Shri Nandlal Ji Purbia,
Age 51 years,
Scientific Assistant/G,
R/o D-32/4,
RRCAT Colony,
Indore-452013

Applicant

(By Advocate –**Shri P.J.Mehta**)

V e r s u s

1. Union of India, through Secretary,
Department of Atomic Energy,
Anushakti Bhawan,
CSM Marg, Mumbai-400001

2. Secretary, Department of Pensions and Pensioner Welfare,
Ministry of Personnel Public Grievances and Pensions,
Lok Nayak Bhawan, Khan Market,
New Delhi-110001

3. Director, Raja Ramanna Centre for Advanced Technology,
Sukhniwas, PO:RRCAT,
Indore-452013

4. Administrative Officer-III,
Raja Ramanna Centre for Advanced Technology,
Sukhniwas, PO:RRCAT, Indore-452013

-Respondents

(By Advocate – **Shri Kshitij Vyas**)

(Date of reserving the order:-08.08.2018)

ORDER

By Ramesh Singh Thakur, JM:-

The applicant has challenged the office memorandum dated 25.01.2017 (Annexure A-1), issued by respondent NO.2 wherein request of Technical cadre employees of Dept. of Atomic Energy (DAE) for changing over from Contributory Provident Fund (CPF) Scheme to Pension Scheme has been turned down. Hence this Original Application.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:

8.1 It be held that the Office Memorandum dated 25th January 2017, Annexure A-1, issued by Respondent No. 2 is arbitrary, ultra vires and against the provisions of Article 14 of the Constitution of India and since it is unconstitutional hence liable to be set aside.

8.2 It be held that the condition provided under Office Memorandum dated 12th October 2000, Annexure A/2, that the option has to be exercised within a period of six months from the date of issue of this OM is arbitrary, ultra vires and is liable to be set aside.

8.3 It be held that the applicant is entitled to switch over to CPF to Pension Scheme as per option exercised by him in 2003 and rejected by the DAE on 12.12.2003, Annexure A-14.

8.4 Alternatively, it be held that respondents shall provide same benefits to the applicant as have been provided by DOS to their Technical Personnel through OMs dated 30.05.1997 (Annexure A/9), dated 19.04.2006 (Annexure A/15).

8.5 Any other relief as deemed proper by this Hon'ble Tribunal for retrospective promotion and the cost of this O.A.”

3. The applicant was appointed as Scientific Assistant/B (Technical Cadre) on 08.06.1987. When his services was confirmed, he preferred CPF Scheme on 31.08.1990. Department of Pensions & Pensioner Welfare (DP&PW) issued O.M. dated 12.10.1992 wherein in Para 2 (ii) it has specifically been provided that the S&T Personnel will have one option to be exercised any time but not later than completion of 20 years of qualifying service to switch over from CPF to Pension Scheme or to retain the CPF Scheme as they may wish. It has also been mentioned in the said O.M. that who have not completed 20 years qualifying service as on 01.08.1992 and are not completing 20 years qualifying service on 09.04.1993 and are still on CPF Scheme will be treated as fresh entrants and will be governed by CPF scheme.

3.1 DP&PW reviewed its earlier O.M. dated 12.10.1992 and issued another O.M. wherein it has been decided to maintain the status quo ante, as prevailing prior to the issue of above mentioned orders, in respect of the pensionary/terminal benefits admissible to Scientific and Technical Personnel of the Dept. who were in service as on 01.08.1992.

3.2 Thereafter DAE issued impugned OM dated 12.10.2000, Annexure A-2, wherein it has been decided to provide one more option for switching over to GPF/Pension Scheme from CPF to all

Technical Personnel who joined services prior to 01.08.1992 and have not completed 20 years service and are still in CPF. This Option was to be exercised within 6 months from the date of O.M. This O.M. was neither widely circulated in Technical Departments nor copy thereof was provided individually to the concerned personnel.

3.3 It has been informed to the applicant vide letter dated 12.12.2003 that since he is governed by O.M. dated 17.01.1967 issued by DAE, therefore no further option is available with him to exercise in favour of Pension Scheme since he has already exercised his option at the time of his confirmation. Copy of letter dated 12.12.2003 is annexed as Annexure A-14.

3.4 The matter has been reviewed vide Office Memorandum dated 19.04.2006 (Annexure A-15) and it has been noted that inadvertently, the above mentioned S&T categories were not given an option to switch over from CPF to GPF/Pension Scheme. It has therefore, been decided to extend an option to switch over from CPF to GPF.

3.5 The main ground for challenge in this O.A. is that DP&PW is expected to maintain harmony in its policies framed for a particular class of employees of different establishments. There is no scope for arbitrariness. Rejection of proposal forwarded to

DP&PW for its concurrence, is against the provisions of Article 14 of the Constitution of India. It is seen that DP&PW has issued impugned letter dated 25.01.2017 without taking cognizance of the letter and spirit of the proposals advanced to it by the DAE.

4. The replying respondents have filed the reply and it has been submitted that the option submitted by the applicant in the year 2003 for switching over from CPF to Pension/GPF Scheme, was rejected by DAE on 12.12.2003 (Annexure A-14). The applicant may alternatively be provided the same benefits which have been provided by Dept. of Space to their Technical Personnel vide O.M. dated 30.05.1997 (Annexure A-9) and 19.04.2006 (Annexure A-15).

4.1 The respondents have submitted their para-wise reply in which they stated that Dept. of Atomic Energy vide Office Memorandum dated 12.10.2000 extended the final option as a special case to all the technical personnel of the Dept. of Atomic Energy who joined service prior to 01.08.1992 and have not completed 20 years of qualifying service and are still in CPF and want to come over to pension scheme. This option has to be exercised within six months from the date of issue of the said O.M. The applicant did not exercise the option to switch over to pension scheme even otherwise the opportunity was extended to him.

4.2 The respondents further contended that no comparison can be made with the employees of the Dept. of Space as the purpose and functioning of both the departments are different. Having not acted on the O.M. dated 23.07.1996 and 12.10.2000 thereby not availing the opportunity of exercising fresh option, the applicant is now wrongly comparing his case with that of the Dept. of Space.

5. The applicant has filed the rejoinder. The applicant has reiterated its earlier stand taken in the Original Application.

5.1 Learned counsel for the applicant in its rejoinder submitted that applicant is seeking quashment of the condition, as stipulated in Annexure A-2, of opting option to switch over from CPF to Pension within a period of six months. As evident from Annexure A-16 that no such condition has been incorporated in the O.M. issued by the DP&PW.

6. We have heard the learned counsel for both the sides and perused the documents available on record.

7. Regarding the appointment of the applicant, there is no dispute to the fact that the applicant was appointed as Scientific Assistant/B (Technical Cadre) on 08.06.1987. There is no dispute to the fact that when the applicant joined his services and on confirmation he preferred CPF Scheme on 31.08.1990. Further it is also admitted fact that the Department of Pensions & Pensioner

Welfare (DP&PW) issued O.M. dated 12.10.1992 wherein it was provided that the S&T Personnel will have one option to be exercised any time but not later than completion of 20 years of qualifying service to switch over from CPF to Pension Scheme or to retain the CPF Scheme as they may wish. It also admitted fact that the DP&PW reviewed its earlier O.M. dated 12.10.1992 and issued another O.M., wherein it has been decided to maintain the status quo ante. It is further clear from the pleadings that DAE issued impugned OM dated 12.10.2000, Annexure A-2, wherein it has been decided to provide one more option for switching over to GPF/Pension Scheme from CPF to all Technical Personnel who joined services prior to 01.08.1992 and have not completed 20 years service and are still in CPF. In the said O.M. the option was to be exercised within 6 months from the date of issuance of O.M.

8. It is admitted fact by the applicant that the applicant had not exercised option, within prescribed 6 months from the date of issuance O.M. Annexure A-2. Although the applicant exercised his option at the time of his confirmation but later on the applicant has not exercised his option for switching over from CPF to GPF/Pension Scheme in the prescribed period as per Annexure A-2. The main ground for challenging the action of the respondents is, that the representation of the applicant was rejected by DAE on

12.12.2003 (Annexure A/14), that the said O.M. dated 12.10.2000 (Annexure A/2) has not given wide publicity and due to this reason the applicant could not know about the period to exercise his option. The respondents on the direction of this Tribunal has filed the affidavit dated 20.06.2018 qua the fact regarding exact measure taken by the respondents to give wide publicity to the O.M. dated 12.10.2000. In this affidavit, the replying respondents has specifically stated that vide O.M. dated 12.10.2000 had extended one more final option to all the technical personnel of the DAE who joined service prior to 01.08.1992 and have not completed 20 years of qualifying service and are still in CPF to come over to pension scheme as a special case within a period of 6 months from the date of issuance of this O.M. It has been specifically stated in this affidavit that the aforesaid O.M. has been given wide publicity vide endorsement dated 24.10.2000 (Annexure R/5). It has been further submitted by the replying respondents that the copy of the above endorsement was not only displayed on all notice boards of RRCAT but also forwarded to all Head of Divisions/Sections/Labs and President, CAT Staff Association. It has been further submitted that in response to above endorsement, 15 Technical personnel and 6 Scientific personnel (initially appointed under the Technical Cadre prior to 01.08.1992) and later on promoted to Scientific

posts (Annexure R/8) of RRCAT, had shown their willingness and opted to switch over to pension scheme against the O.M. dated 12.10.2000. So, there were total 1170 personnel working in RRCAT as on 30.11.2000, in which 384 scientific, 549 technical and 237 administrative and auxiliary personnel were working. So, it has been particularly mentioned in Para 5 of the said affidavit that the list of 14 employees (Annexure R/10) who did not opt to switch over to pension scheme and retained in CPF against O.M. dated 12.10.2000. So, it is also clear from the affidavit of the replying respondents that wide publicity has been given regarding the O.M. dated 12.10.2000 and it is clear from the affidavit of the replying respondents that many personnel have opted for pension scheme as per O.M. dated 12.10.2000 (Annexure A/2). So, the submission made by the applicant that there was no wide publicity regarding Annexure A/2 O.M. dated 12.10.2000 is not sustainable and that cannot be believed at all.

9. The second ground for challenging the action of the respondent is that the other sister organizations of the respondent-department had provided another chance to opt for the said scheme. Regarding this the replying respondents had relied upon the judgment passed by Hon'ble High Court of Madhya Pradesh vide Writ Petition No. 9146/2012 dated 16.07.2014 whereby the

Hon'ble High Court has upheld the decision made by this Tribunal in O.A. No.886/2009, whereby the same question arose regarding seeking the benefit of pension scheme as available to employer of sister organizations. It is pertinent to mention that the Hon'ble High Court has rejected the claim of the petitioner in the said Writ Petition and decision of this Tribunal has been upheld.

10. In view of the above, we are of the view that there is no merit in this O.A. and resultantly, this O.A. is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
rn/kc

(Navin Tandon)
Administrative Member