CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No.290/00415/2015

RESERVED ON: 19.09.2018

Jodhpur, this the 10th October, 2018

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

1. Arid Zone Employees Union, (AITUC), Out side Sojati Gate, Jodhpur through its Secretary Shri A W Ansari S/o Shri Abdul Rehman, Aged 63 years, R/o Outside Sojati Gate, Jodhpur.
2. Chattar Singh S/o Shri Kumbh Singh, Aged 49 years, Supporting Staff in the Central Arid Zone Research Institute, Jodhpur R/o 549, Subhash Nagar-II, Jodhpur.

.....Applicants

By Advocate : Mr Vijay Mehta.

Versus

1. India Council of Agricultural Research, through its Secretary, Krashi Bhawan, New Delhi.
2. Director, Central Arid Zone Research Institute, Jodhpur.
3. Assistant Administrative Officer (Adm-I), Central Arid Zone Research Institute, Jodhpur.

.....Respondents

By Advocate : Mr. A. K. Chhangani.

ORDER

The present Original Application has been filed by an 'Association' of the employees working in the Central Arid Zone Research Institute, Jodhpur (hereinafter referred to as CAZRI) alongwith one affected person for joining together in single

Original Application as per rule 4 (5) (b) of CAT (Procedure) Rules, 1987, seeking following reliefs:-

> "That from the facts and grounds mentioned hereinabove the applicants pray that they may be allowed to pursue the OA jointly. It is prayed that order ANN 1 may kindly be quashed. It is further prayed that the action of the respondents for effecting recovery from the salary, pension, gratuity and other retiral benefits or from any other amount may kindly be quashed. It is further prayed that respondents may kindly be restrained from effecting recovery from the salary, pension, gratuity or from any other amount from the above said 268 employees and their legal heirs. The respondents may kindly be further directed to return back the money with interest at the rate of 24% to the employees and/or legal heirs of the employees from whom such recovery has been made. It is further prayed that the respondents may kindly be directed to immediately make payment of pension and retiral benefits to the employees who have since retired and are retiring and to pay family pension and retiral benefits to the legal heirs of the deceased employees out of the list of 268 employees. Any other order giving relief may also be passed. Costs may also be awarded to the applicants."

2. The brief facts to resolve the present controversy are that the applicants herein is an 'Association' namely Arid Zone Employees Union (AITUC) in CAZRI joined together with applicant No. 2 (affected person) in a Single OA. It has been averred that Association is having registration No. 197/66 and vide resolution dated 30.09.2015 resolved to file the present OA against impugned order dated 22.09.2015 passed by respondent No. 3 in pursuance of directions issued by this Tribunal in OA No. 493/2012 vide order dated 18th May, 2015 (Annex. A/25). It is worthwhile to mention that applicant Association raised an

industrial dispute No. 16/86 before the Labour Court for regularization of 268 casual labours (Annex. A/4) including applicant No. 2, i.e. Chhatar Singh (S.No. 141). Vide Award dated 29.04.1989, Labour Court directed the respondents to regularize the services of all those casual labours who were appointed from 1965 to 1983 and had completed two years service. The Award of the Labour Court was upheld by Hon'ble Rajasthan High Court and Hon'ble Supreme Court. However, the respondents have only given temporary status to the applicants. Thereafter, on denial of medical reimbursement claim, the applicant-Association filed OA No. 212/2006 before this Tribunal seeking medical reimbursement and also to treat them regular as a permanent employee for all purposes. This Tribunal vide order dated 12.12.2008 (Annex. A/2) passed in aforesaid OA directed the respondents to treat the applicant No. 2 therein and other listed employees as a permanent/regular employee for all purposes including reimbursement of medical expenses. In pursuance of order dated 12.12.2008 in OA No. 212/2016 and order dated 21.11.2008 in OA No. 188/2006 filed by applicant No. 2, the respondents passed order dated 15.02.2010 (Annex. A/5), 28.04.2010 (Annex. A/7) and 27.11.2009 (Annex. A/6) respectively regularizing the services of the casual labours from the completion of 02 years service as Casual Labour, i.e. w.e.f. 29.10.1989 including applicant No. 2 herein. The services of the

casual labour who in the meantime retired or expired had also been regularized. The case of the applicants herein is that while they were casual labour they were contributing in Employees Provident Fund (EPF). However, when their services were regularized, the EPF contribution ceased to be applied and they came to be governed under CCS (Pension) Rules, 1972 wherein General Provident Fund (GPF) is applicable. The respondents instead of regularizing them in pursuance of award of Labour Court, granted temporary status to the casual labours in the year 1993 and as per para 5 (iv) of the Scheme of Grant of Temporary Status to casual labours, such temporary status employees after rendering three years' continuous service were treated at par with temporary Group 'D' employees for contributing towards GPF Scheme. Thus, these employees ceased to be covered by EPF Scheme after completion of continuous three years' temporary status service. During course of their service as casual labour, the respondents collected employees contribution regularly and deposited the same alongwith their contribution as an employer in the accounts of EPF Office, Jodhpur. However, temporary status casual labour being entitled to contribute towards GPF, the entire EPF contribution of these casual labours have been returned by the EPF Organization by several different but identical letters in the year 1997 (Annex. A/11). The said refunded EPF contribution was paid to the concerned employees

in the year 1997 itself. The grievance of the applicants herein is that the respondents are pressing hard for affecting recovery of employer's contribution towards EPF paid to the employees mostly in the year 1997 alongwith interest whereas the respondents themselves have no details of amount contributed by them and most of the details provided to some persons are handwritten and mostly unreadable. Further, it has also been averred that according to Employees Provident Funds Scheme, 1952 where a member is transferred from a covered establishment to other uncovered establishment under the same employer the accumulations in the Fund, i.e. full amount standing to his credit in the Fund in his account shall be payable to him since he ceases to be an employee covered by the Scheme. The credit in the fund of the employees includes the employer's contribution and interest on the balance standing to the credit of the member. Thus, the employees were entitled to get the entire amount of EPF including the employer's share and applicants herein were rightly paid employer's share also. Further, neither concerned employees nor Association requested to EPF Organization to return EPF amount. Rather, respondents suo motu approached the EPF Organization to return the complete amount and paid the same to the concerned employees. Hence, the applicants challenged the action of the respondents to recover their part of EPF contribution before this Tribunal in OA No.

493/2012 and this Tribunal vide order dated 18.05.2015 disposed of the said OA with the directions that opportunity of hearing may be provided to the applicants therein with regard to their grievance and thereafter respondents treat the OA and rejoinder as an additional representation and decide the same within four months from the date of receipt of the copy of the order. But, respondents were restrained vide order dated 26.03.2013 of this Tribunal to realize EPF dues till decision on their representation. In pursuance of order dated 18.05.2015 passed by this Tribunal, respondents issued order dated 22.09.2015 (Annex. A/1) that employer's contribution refunded by EPF Organization will be recovered with interest from the employees who were retrospectively regularized from 29.10.1989 against regular posts. Therefore, applicants have filed the present OA stating that despite clarification dated 11.09.1996 wherein it has been stated that past accumulation of EPF shall either be paid to the employee or transferred to GPF Account. The respondents have initiated steps to recover part of the said accumulated EPF amount together with interest after more than 12 years and pressed the employees to make payment to the respondents. The applicants further stated that without any reasons, the recovery is being made on the basis of undertaking given by the employees but the respondents have not furnished any copies of undertaking. Also no show cause notice was served to the employees and recovery

is being made without granting them any opportunity and the respondent No. 2 suo motu paid the amount years back which has been utilized by the employees and many employees have since been retired and have died. Hence, the present OA has been filed seeking relief mentioned above as the action of the respondents is arbitrary and discriminatory and therefore, the impugned order deserves to be quashed.

3. The respondents filed reply raising preliminary objection that applicant No. 1 is claiming to be "Arid Zone Employees Union" for casual workers whereas the applicant No. 2 is regular employee of respondent No. 2. The Arid Zone Employees Union and an individual employee cannot jointly file the Original Application. The applicant No. 1 has not averred as to how many employees are the members of this Union and when the same was formed and for what are the objects and what is the constitution of Union. The status of applicant No. 1 is also not known and under what legal authority the present OA is filed. The applicant No. 1 claims to represent 268 labours, which is patently wrong as out of 268 labours whosoever served in the establishment of respondent No. 2, were regularized and after regularization they ceased to be the labours/workers. The regularized employees are in a regular cadre and therefore, they have become the Members of the Institute Joint Staff Council (I.J.S.C.). Thus, the applicant No. 1

automatically ceases to exist in law. The applicant No. 2, i.e. Mr Chhatar Singh on being regularized against the post of regular Mazdoor, is also a Member of I.J.S.C. employees Union. Thus, when ICAR has created an in-house forum for looking after the interest of the employees where all grievances can be negotiated, examined and redressed within the frame work of rules and other relevant factors, then applicant No. 1 has no legal authority to move the Hon'ble Tribunal for the redressal of grievances of the employees. Earlier in Contempt Petition No. 16/2009 in OA No. 212/2006, this Tribunal vide order dated 18.03.2011 observed that in the above OA (OA No. 212/2006) and whose individual claims, and any other consequential benefits, which ought to have flowed after the order of this Tribunal, have accrued to them and accordingly same would give rise to a fresh cause of action for them in their individual capacity, and thus applicants would be free to agitate the matter afresh. Thus, the operative part of the said order clearly shows that those employees who had any genuine claim and grievance then they can move in an individual capacity for redressal of their grievance, if any. Thus, the applicant No. 1 'Association' has no legal authority to raise disputes on behalf of other individuals. The respondents thus stated that in view of these preliminary objections, the OA is not maintainable and inconsistent and in utter disregard to the order dated 18.03.2011 in C.P. No. 16/2009.

While replying to the merits of the case, respondents stated that the workers in the establishment of respondent No. 2 were working on casual basis and an award was passed by the learned labour court on 29.10.1989 for their regularization. Since these workers were not regularized, then at that time the Scheme called "Employees Provident Fund" was required to be adhered to and employer's and employee's share were to be contributed so that if an employee cannot be regularized then such employee would be paid pension out of the employer's and employee's contributions given in the office of the Employees Provident Fund. The respondent No. 2 being the employer, contributed its share and similarly the workers at the relevant time also contributed their share and an undertaking was given by the workers that in future if their services would be regularized, then the amount of EPF which will be returned by the EPF Office, shall be given back to the respondents/employer to the extent of employer's share together with interest (Annex. R/5). When these workers were regularized, they became the members of the GPF Scheme and ceased to be the members of the EPF and accordingly, EPF Commissioner returned the entire EPF contribution. As per undertaking given by the workers (now employees) they were required to allow the respondent their share of EPF contribution because on being regularized they have become the members of the GPF Scheme and no employee can take benefit of EPF Scheme

as well as GPF Scheme. The amount of EPF received from the office of the EPF Commissioner was paid to the concerned employees in the year 1997. The employer's share was also credited in the account of the employees, which the respondent No. 2 employer is bound to recover from the employees being Government dues as now those workers have become the employees and therefore, they cannot be permitted to take two advantages at the same time. The respondents have with them bifurcation figures of their share and necessary information has been obtained from the office of EPF Commissioner (Annex. R/7). Employer's share towards the EPF Scheme is "Government due" and under no circumstances the same can be allowed to be unjustly taken by any employee. The applicants are not entitled to take benefit of both GPF and CPF Schemes. They had given an undertaking that they would return the employer's share of EPF if their services are regularized. Since their services are regularized, therefore, they are not entitled to retain the employer's share of EPF contribution. Therefore, the respondents are duty bound to recover the said dues. The respondents have provided the necessary details/statements of recovery of the 251 employees on 23.09.2015 (Annex. R/6). The respondents after hearing the applicants on 19.09.2015 in presence of respondent No. 2, issued formal speaking order for implementation of order dated 18.05.2015 passed in OA No. 493/2012. If the employees

are allowed to retain the entire amount credited in their respective accounts then the employees will become members of two different Schemes, i.e. EPF and GPF, which is not permitted under the rules. Rule 71 of the CCS (Pension) Rules, 1972 casts a duty on the Head of Office to either recover or adjust the government dues. The recovery/adjustment of Government dues is being made from the leave encashment/DCRG/arrear payment of regularization from the retrospective date of 29.10.1989 of the employees. The respondents have thus submitted that the impugned order is just and proper and prayed to dismiss the OA on the issue of maintainability as well as on merits.

4. In rejoinder, the applicants reiterated the averments made in the OA. However, the applicants have inter-alia stated that the rules governing to the filing of joint Original Application do not prescribe that the same can only be filed by registered Union. Any Association, even unregistered can file the OA. The Rules do not provide to disclose the number of members of the Union, the date of registration of the Union and what are its objects and what is its constitution. Examination of these issues is not within the jurisdiction of this Tribunal and they are within the purview of the Registrar Trade Unions under the Trade Unions Act. With regard to IJSC, applicants submitted that IJSC is not registered as a Trade Union under the Trade Union Act, but it is a joint forum of the

employer and employees for promoting harmonious relation where consultations are limited to the matters of general principles. It is further submitted that in every Central Government department, there is PNM or JPC like LJSC to discuss matters pertaining to the employees in joint meetings of the employer and the employees. The applicant No. 2 is the Assistant Secretary of the Union and has been elected as a member of the IJSC by securing highest votes and he is not member of IJSC employees union. The applicants denied that they had given undertaking to the effect that in case they are regularized then amount of EPF which was returned and paid to them shall be given back. Annex. R/5 is not an undertaking but an affidavit which is not even attested by Notary Public or Oath Commissioner and as such same is not verified. This is just a draft prepared by the respondent authorities which pertains to Chhattar Singh. The respondents have not filed any undertaking of other employees.

5. Heard learned counsel for the parties.

6. Learned counsel for the respondents inter-alia raised the preliminary objection regarding maintainability of the present OA filed by the 'Association' and contended that it is not known whether applicant 'Association' is registered or not as on date, what its object and its Constitution. As such, applicant has no legal authority to file present OA in the name of 'Association'. On

the other hand, learned counsel for the applicant submitted that as per Rule 4 (5) (b) of the CAT (Procedure) Rules, 1987, it is not mandatory for any 'Association' to be registered one. Applicants, however, mentioned their registration number of the 'Association' and humbly made a prayer seeking permission to file joint application on behalf of applicant No. 1 'Association' alongwith one affected person. He further submitted that earlier also such joint applications have been filed and entertained by this Tribunal.

7. I have considered the arguments advanced on behalf of the parties on the issue of maintainability and perused the record. It is not disputed that as per rule 4 (5) (b) of CAT (Procedure) Rules, 1987 this Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause and the nature of relief prayed for, that they have a common interest in the matter. Further, such permission may also be granted to an Association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories or persons on whose behalf it has been filed provided that at least one affected person joins such an application. However, as per Rule 7 of 'The Central Administrative Tribunal Rules of Practice, 1993' where an application/pleading or other proceeding

purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall be produced along with such application, etc., for verification by the Registry, a true copy of the resolution of the Association empowering such person(s) to do so provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorisation. In the present case, the identity of person joining together being an aggrieved person has not been disputed by the respondents. It is contended by the respondents that applicant-association should have placed the objects of the 'Association', Constitution of Union, Resolution etc on record. In the facts and circumstances of the present case, I am not inclined to consider the contention put forth by the respondents as the main object of calling all such documents by the Registry is to identify the 'Association' as well as aggrieved person for the purpose of authorization, which has not been disputed by the respondents. Moreover, the applicant-Association have filed Original Applications No. 212/2006, 493/2012 earlier and in pursuance of directions issued by this Tribunal, the services of the applicants have been regularized. The issue involved in the present OA is also an off-shoot of the same. The applicants have also placed on record the list of affected persons (Annex. A/15). Therefore, looking to all these aspects and the fact that present OA has been filed in the year

2015, I am not inclined to sustain the preliminary objections raised by the respondents though this Tribunal on 10.09.2018 directed the applicants to bring on record constitution and registration certificate of the 'Association' on record, which has not been done by the applicants. In the interest of justice, I deem it appropriate that matter be heard on merits and accordingly the prayer made by the applicants in pleadings of the OA to allow them to pursue the matter jointly in the name of 'Association' is allowed in the given facts and circumstances.

8. Learned counsel for the applicant inter-alia submitted that casual labours of the respondent-department have been granted temporary status in pursuance of Labour Court award dated 29.04.1989. On the directions passed by this Tribunal in various Original Applications, services of the casual labours were regularized w.e.f 29.10.1989 by the respondent-department vide order dated 15.02.2010 (Annex. A/5), 27.09.2009 (Annex. A/6) and 28.04.2010 (Annex. A/7) and all the casual labours became entitled to get the pensionary benefits from the date of completion of their 02 years service of casual labour. When all these employees were casual labours, they were covered by the EPF Scheme and their contribution alongwith respondents' contribution was regularly deposited in their respective EPF Accounts. On being covered by GPF Scheme and CCS (Pension)

Rules, 1972, the EPF Commissioner returned the entire EPF contribution to the respondents and thereafter, respondents returned the same to these persons. However, respondents sought to recover their share with interest from all these employees who were covered under GPF Scheme or CCS (Pension) Rules, 1972 from EPF. The action of the respondents to recover their share of EPF has been challenged by the applicants in OA No. 493/2012 in this Tribunal and vide order dated 18.05.2015, this Tribunal was pleased to restrain the respondents from realizing EPF dues as determined till the applicants be provided opportunity of hearing and decide the OA and rejoinder filed by them treating as an additional representation. The respondents vide impugned order dated 22.09.2015 decided the same that EPFO subscription of the employer shall be recovered with interest. He thus contended that there is no rule under the EPF Scheme to recover the employer's subscription. The provisions of EPF Scheme provides that in the account opened in the name of the member of the Fund the contribution of the employee and employer and interest shall be credited in his account and full accumulation in the fund standing to his credit is payable to the member of the Fund. He further contended that there is no provision in the Scheme to refund the employer's share of EPF contribution and respondents are not entitled to recover the same once they have returned their share now when

they themselves returned the same in the year 1997. He relied upon the judgment of Hon'ble Supreme Court in Rafiq Masih's case with regard to recovery.

9. Learned counsel for the respondents inter-alia submitted that the respondent No. 2 being an employer, contributed its share and similarly the workers at the relevant time also contributed their share. An undertaking was also given by the workers that in future if their services would be regularized then the amount of EPF which will be returned by the EPFO shall be given back to the employer to the extent its share is concerned (Annex. R/5). When these workers were regularized, they became the member of GPF Scheme and ceased to be the member of EPF. Accordingly, EPF Commissioner returned the entire EPF contribution. As per the undertaking given by the workers (now employees), they are required to allow the respondents to recover their share of EPF contribution because on being regularized, they have become member of GPF Scheme and no employee can take benefit of EPF Scheme as well as GPF Scheme at the same time. He thus contended that as per Rule 71 of CCS (Pension) Rules, 1972, respondents are entitled to recover/adjust the Government dues.

10. I have considered the arguments advanced by the parties and also perused the record. In pursuance of order dated

12.12.2008 (Annex. A/2) and 21.11.2008 (Annex. A/3) passed by this Tribunal in OA No. 212/2006 and 188/2006 respectively, applicants were treated to be as permanent employees of respondent-department from 29.10.1989 onwards, i.e. from a retrospective date. Consequently, their services had become pensionable. Earlier they were contributing in the EPF Scheme and on being brought over to pensionable service vide Annex. A/5, A/6 and A/7 orders passed by the respondents in terms of Rule 4 of the GPF Scheme. None of the parties put forth the complete E.P.F. and G.P.F. Schemes and the rules notified governing such Schemes. Rule 4 of GPF Scheme is as under:

Rule-4: CONDITIONS OF ELIGIBILITY

> 4. Conditions of eligibility - All temporary Government servants after a continuous service of one year, all re-employed pensioners (other than those eligible for admission to the Contributory Provident Fund) and all permanent Government servants shall subscribe to the Fund:
>
> Provided that no such servant as has been required or permitted to subscribe to a Contributory Provident Fund shall be eligible to join or continue as a subscriber to the Fund, while he retains his right to subscribe to such a Fund:
>
> Provided further that a temporary Government servant, who is borne on an establishment or factory to which the provisions of Employees' Provident Funds Scheme, 1952, framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), would apply or would have applied but for the exemption granted under Section 17 of the said Act, shall subscribe to the General Provident Fund if he has completed six months' continuous service or has actually worked for not less than 120 days during a period of six months or less in such establishment or factory or in any other establishment or factory to which the said Act applies, under the same employer or partly in one and partly in the other.

11. The controversy involved in this case is whether applicants are entitled to possess the employer's part/share contributed in the Provident Fund of the worker which was returned to them by the respondents after their regularization from retrospective date and come over from non-pensionable establishment to pensionable establishment (GPF Scheme). The plea of the applicants is that they had worked under the respondents and therefore, it is not a bounty but a legal right to keep with them the respondents share also. The respondents' plea is that the applicants have been brought under pensionable service at par with regular employees and were accordingly covered under GPF Scheme, therefore, contribution of the Government alongwith interest accrued, is repayable to them as applicants cannot take benefit of both the Schemes, i.e. EPF and GPF (pensionable as well as non-pensionable establishment). I have considered the rival contentions of both the parties. The Provident Fund Schemes have been floated by the Government as a welfare measure. Undoubtedly, the applicant fought a legal battle to come over to pensionable service and opted for GPF Scheme. On a pointed query in this regard by the Tribunal during course of hearing, Mr Vijay Mehta, learned counsel for the applicant clearly stated that it is not their case that they do not want to be governed under GPF

Scheme. However, regarding document R/5 dated 16.10.1997 brought on record by the respondents, he disputed that it is neither an undertaking nor an affidavit. He, however, did not dispute the veracity of Annex. R/5 document in respect of applicant No. He further qualified his argument by stating that the respondents have not placed on record such document in respect of all affected persons. In Annex. R/5 document filed by the respondents, it has clearly been mentioned that in case of temporary service being counted against pensionable service, applicant No. 2 will deposit the employer's share alongwith interest. I am not impressed by the argument advanced by learned counsel for the applicant that the respondents should have placed such document on record in respect of all affected person considering the fact that applicants themselves chose to file present Original Application as per rule 4 (5) (b) of CAT (Procedure) Rules, 1987 by joining together in Single Application. Therefore, it is not incumbent upon the respondents to object such document in respect of all affected persons on record. The respondents have rightly placed on record such document in respect of only applicant No. 2 who joined herein as an affected person alongwith 'Association'.

12. Relying upon judgment passed by Hon'ble Apex Court in Tara Chand & Ors v. Municipality Gharaunda reported in JT 2009

(5) SC 538, learned counsel for the applicant contended that Group 'D' employee who did not know the implications of giving such undertaking and also as there is no fraud or misrepresentation attributed to their part, a lenient view should be taken and such an undertaking (Annex. R/5) should not be considered by this Tribunal. I have gone through the judgment cited by learned counsel for the applicant. In the present case, the applicants themselves chose to move from non-pensionable Scheme to a more beneficial pensionable Scheme and opted for Provident Fund Scheme attached with the pensionable service, i.e. GPF Scheme. Therefore, it cannot be said that the applicants were ignorant while furnishing such an undertaking before the respondents. Moreover, I find force in argument advanced by the respondents that the applicants cannot enjoy fruits of both the Schemes at the same time. The respondents keeping in view Annex. R/5 document, in all fairness refunded their part of contribution in the Provident Fund also instead of returning only worker's contribution and interest accrued thereon. In my view, such an action of the respondents cannot create any right in favour of the applicants not to refund the respondents' contribution alongwith interest accrued thereon. Once the applicants chose GPF Scheme under pensionable service, it is incumbent upon them to refund the employer's share alongwith interest. Rule 38 of Contributory Provident Fund clearly stipulates that the amount

of contributions by Government with interest thereon standing to credit of the subscriber in the Fund shall be repaid to Government in event of transfer from non-pensionable establishment to pensionable establishment. Rule 38 of Contributory Provident Fund, 1962 is as under :

RUE 38- PENSIONABLE SERVICE
38. Procedure on transfer to pensionable service –
(1) If a subscriber is permanently transferred to pensionable service under the President, he shall, at his option, be entitled-
(a) to continue to subscribe to the Fund, in which case he shall not be entitled to any pension; or
(b) to earn pension in respect of such pensionable service, in which case, with effect from the date of his permanent transfer-
(i) he shall cease to subscribe to the Fund;
(ii) the amount of contributions by Government with interest thereon standing to his credit in the Fund shall be repaid to Government;
(iii) the amount of subscriptions together with interest thereon standing to his credit in the Fund shall be transferred to his credit in the General Provident Fund, to which thereafter he shall subscribe in accordance with the rules of that Fund; and
(iv) he shall thereupon be entitled to count towards pension, service rendered prior to the date of permanent transfer, to the extent permissible under the relevant Pension Rules.
(2) A subscriber shall communicate his option under sub-rule (1) by a letter to the Accounts Officer within three months of the date of the order transferring him permanently to pensionable service; and if no communication is received in the Office of the Accounts Officer within that period, the subscriber shall be deemed to have exercised his option in the manner referred to in Clause (b) of that sub-rule.

13. Relying upon judgment of Hon'ble Supreme Court in State of Punjab v. Rafiq Masih (White Washer) & Ors reported in (2015) 4 SCC, learned counsel for the applicant contended that such recoveries cannot be made after lapse of considerable time

period. He contended that the respondents refunded their share of contribution in the year 1997 and now in view of aforesaid judgment, they cannot recover the same. He further submitted that the workers did not ask for refund of Government's share to them. Respondent's, however, on their own refunded the same and now sought to recover Govt. share alongwith interest without giving any details in the form of proper statement showing contributions as well as interest accrued. I have gone through the judgment cited by learned counsel for the applicant. The facts as well as issue involved in the present case is quite distinct from the one considered by the Hon'ble Apex Court in Rafiq Masih's case (supra). In Rafiq Masih's case, Hon'ble Apex court laid down the parameters of facts, situations, wherein employees who are beneficiaries of wrongful monetary gains at the hands of the employer may not be compelled to refund the same. In the aforesaid case, the Hon'ble Apex Court considered the wrongful excess payment made on account of pay fixation etc. In the present case, issue is limited to refund of employer's subscription in event of transferring workers services from non-pensionable to pensionable establishment. Therefore, looking to entire facts and circumstances of the case, I am of the view that in event of transfer of services of the worker from non-pensionable establishment to pensionable establishment, the contribution made by the employer alongwith interest accrued thereon, ought to be

refunded by the worker irrespective of any undertaking or delay as he can only be benefited from one Scheme only. Hence, in the facts and circumstance of the present case, judgment relied upon by the applicant is not applicable.

14. Having considered all the arguments and going through material available on record, I am not inclined to interfere with impugned order dated 22.09.2015 (Annex. A/1) but to direct the respondents to provide statements to the employees before getting their share of contribution back alongwith interest accrued thereon within three months' from receipt of a copy of this order. If any objections regarding accounting procedures/calculations is received by the respondents from the applicants, they shall dispose of the same before acting upon order dated 22.09.2015.

15. In terms of above directions, OA is disposed of. No costs.

[Hina P. Shah]
Judicial Member

Ss/-