

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00411/2017

with

Misc. Application No.290/00308/2017

This, the 11th day of October, 2018

Reserved on 01.10.2018

.....

CORAM:

HON'BLE SMT. HINA P. SHAH, MEMBER (J)

...

Smt. Kumudini Pandey w/o Shri R.P. Pandey, aged 60 years, by caste Pandey, R/o C-17, Arvind Nagar, Air Force Area, Ratanada, Jodhpur (Rajasthan).
(retired as PGT from the respondent No.4)

...APPLICANT

BY ADVOCATE : Mr. M.S. Godara

VERSUS

- 1.Kendriya Vidhyalaya Sangthan (KVS), 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110602 through its Commissioner.
- 2.Joint Commissioner, Kendriya Vidhyalaya Sangthan (KVS), 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110602.
- 3.Deputy Comissioner, Kendriya Vidhyalaya Sangthan, Regional Office, 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur 302015 (Rajasthan).
- 4.Principal, K.V. No.1, Air Force, Jodhpur (Raj.)

RESPONDENTS

BY ADVOCATE : Mr.Avinash Acharya with Mr. Binja Ram

ORDER

...

The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "(i) That this application may kindly be allowed; and*
- (ii) That the respondents may be directed to consider the services of the applicant governed by the GPF/pension scheme w.e.f. 01.09.1988 in pursuant to the para 3 of O&M dated 01.09.1988 (Annexure-A/1).*
- (iii) That the action of the respondents considering the applicant services governed by the CPF after 01.09.1988 even in absence of any option form, be declared illegal.*
- (iv) That the services of the applicant may be declared governed by the GPF and may be held entitle for the retiral/ pension benefits under the GPF Scheme.*
- (v) That the applicant may be paid the retiral benefits as per GPF Scheme along with pension by adjusting the amount of CPF paid to her and in case required the applicant is ready to deposit the same back to the respondents.*
- (vi) Any other relief which this Hon'ble Tribunal deems just and proper in favour of the applicant may be passed."*

2. The brief facts of the case as stated by the applicant are as under:-

The applicant was initially appointed as Primary Teacher vide order dated 10th July, 1981 in KVS, and she joined duty on 17th July, 1981. After joining her duty on the post of Primary Teacher, she opted for CPF vide

option dated 13th August, 1981 (Annexure-A/2). Thereafter, the applicant was appointed on the post of TGT (Biology) as direct recruittee vide order dated 29th September, 1982 and posted at KV, Surat (Gujrat) which was changed to Sri Ganganagar and subsequently she was transferred to KV Air Force No.1, Jodhpur. The applicant was thereafter promoted on the post of PGT (Biology) and was posted from KV Air Force No.1 Jodhpur to KV No.2 at Jalandhar (Punjab), where again she was subsequently posted to the same school against vacant post of PGT (Biology).

It has been averred that prior to 1986, in the KVS there were two Schemes in regard of terminal benefits admissible to its employees i.e. General Provident Fund (GPF)-cum Pension Scheme and the Contributory Provident Fund (CPF) Scheme. The employees of the KVS had an option to be a member of the CPF Scheme or the GPF Scheme as the terminal monetary benefits were admissible under both the Scheme and the payment of pension benefits and death-cum-retirement gratuity is paid to the employees of the Sangathan as per the provisions of the Central Civil Services (Pension) Rules, 1972 and the Contributory Providing Fund is paid as per the provisions of the Contributory Provident Fund

Rules (India), 1962. As per the declaration of benefits under the Fourth Pay Commission w.e.f. 01.01.1986, the respondents vide their office memorandum dated 01.09.1988 permitted all the employees of the Sangathan who were in service as on 01.01.1986 and were still in service on 01.09.1988 to switch over from CPF Scheme to GPF Scheme unless an option was consciously exercised by them to continue under the CPF Scheme, and if no option was received by the Head of Office/Principal of the Vidhyalaya concerned by 28.02.1989, the employees would be deemed to have come under the GPF Scheme. It is the plea of the applicant that she has never submitted any option to continue under CPF Scheme in pursuance to OM dated 01.09.1988, thus by virtue of Para 3 of the said OM, the case of the applicant ought to be considered and governed by the pension scheme automatically for which no option was required to be exercised. It is further plea of the applicant that since she did not submit any option, therefore, she was under bona fide impression that she is under GPF Scheme and she continued upto year 2015 under the CPF Scheme on account of wrong committed by the respondents by not treating applicant automatically under the GPF Scheme. The applicant

came to know such fact only in 2015, and thereafter she submitted an application dated 15.03.2015 to the respondents to consider and treat the applicant under GPF Scheme, but the grievance of the applicant was not redressed by the respondents, rather vide letter dated 15.06.2015 the respondents informed to the Secretary, Employees Union that the proposal for grant of permission for changing from CPF to GPF cannot be agreed (Annexures-A/5 & A/6). Thereafter the applicant again submitted an application on 15.08.2016 with a request to the respondents to distinguish her grievance separately from other employees and consider her case under GPF Scheme as she did not submit any option as required as per OM dated 01.09.1988 to continue under CPF, but it was of no avail. The applicant thereafter superannuated on 31st July, 2017 but her grievances were not redressed by the respondents. However, they paid Gratuity of Rs.10 lac vide Cheque dated 21.09.2017 and CPF Rs.20,87,447/- vide Cheque No.33274633 dated 20.09.2017. Thus, the applicant being aggrieved of the inaction on the part of the respondents in not extending the benefit of para 3 of OM dated 01.09.1988 to the applicant for considering her under the Scheme of

GPF, she filed the present Original Application for the reliefs quoted above.

3. After issue notice to the respondents, they have filed their reply on 10.08.2018 stating that the present case suffers from delay and laches as the actual cause of action arose way back in the year 1988 and the applicant has filed the case after almost 30 years of delay. Thus, thus as per Section 21 of the Administrative Tribunals Act 1985, the above OA deserves to be rejected on the ground of limitation alone.

It has been further stated that in the 51st meeting of Board of governors of KVS held on 31.05.1988, it was approved that KVS will implement the recommendation of the 4th Central Pay Commission for its employees for change over from CPF Scheme to GPF Scheme as per the OM dated 01.05.1987. It has been stated that the persons joining the KVS on or after 01.01.1986 shall be governed only by General Provident Fund-cum-Pension Scheme (GPF) and will have no option for CPF Scheme. All the CPF beneficiaries who were in service on 01.01.1986, however, had an option to continue under CPF Scheme, if they so desire. The said option was be exercised and conveyed to the concerned Head of

Office/Principal by 31.01.1989 in duplicate if the employee wished to continue under CPF Scheme. If no option was received by the Head of Office/Principal by the above date and further forwarded by them by 28.02.1989, the employee will be deemed to have come over to the pension Scheme. Thus all the employees as on 01.01.1986 who were members of CPF Scheme, were given an opportunity to exercise a fresh option to continue in the CPF Scheme if they so desire, failing which they will be covered under GPF-cum-Pension Scheme. Thereafter, such scheme was stopped by the Ministry of Human Resource Development vide its letter dated 22.02.2006 and it issued instructions not to permit an employee to switch over from CPF Scheme to GPF Scheme. It is clear that the applicant had joined KVS prior to 1986 and as per the secondary records such as pay bills, annual station of CPF issued and Form 16 issued for filing of Income Tax Return if clearly shows that the applicant was well aware of the fact that the applicant was treated under CPF Scheme. Therefore, the prayer of the applicant for not treating her under CPF Scheme cannot be acceptable at this point of time. Hence there is no illegality on the part of KVS to continue her under CPF Scheme. The respondent further

submitted that the copy of the option exercised by the applicant is not traceable and cannot be produced because of lapse of time of more than 29 years. The respondents in support of its averments relied upon the judgment of KVS & ors. Vs. Jaspal Kaur & ors in Civil Appeal No.2876 of 2007, wherein the Hon'ble Supreme Court has held that merely because the original documents relating the exercise of option was not produced that cannot be a ground for ignorance and there are ample materials to show the exercise of the option. It is clear that there are no materials, in the claim of the applicant for seeking conversion from CPF to Pension Scheme on the ground that the applicant never submitted any option for continuation of CPF Scheme and failure on the part of respondents to trace out such option form and as such the OA is liable to be dismissed. It has been further averred that the applicant on her own violation had opted for CPF Scheme and had taken conscious decision to continue in CPF Scheme. As per the 51st Meeting held on 31st May, 1988, it was decided that KVS will implement mutatis mutandis the decision taken by the Government of India on the recommendation of Fourth Pay Commission for the KVS employees for change over from CPF to Pension Scheme in the manner

indicated in OM dated 01.05.1987. It was accordingly decided vide KVS OM dated 01.09.1988 that persons joining service on or after 01.01.1986 shall be governed by GPF-cum-Pension Scheme. The applicant was very much aware about the fact that she was treated under purview of CPF Scheme since the other ample material such as Form No.16, pay bills and annual statements clearly shows that regular deduction towards contribution to CPF Scheme was made from time to time. Therefore, the legal notice sent by the applicant on 01.08.2017 is just an afterthought to seek undue advantage from the answering respondents which cannot sustain at such a belated stage. Hence, the present OA deserves to be rejected.

4. Heard Mr. M.S. Godara, learned counsel for the applicant and Mr. Avinash Acharya and Mr. Binja Ram learned counsel for the respondents.

5. Learned counsel for the applicant submitted that as per the OM dated 01.09.1988 issued by the Sangathan in pursuance to the DoPT OM dated 01.05.1977, the serving employee who do not submit any option to continue under the existing CPF Scheme would

automatically be switched over to new scheme i.e. GPF/Pension Scheme. The OM further provides that the cutoff date for receiving such option is 28.02.1989 and thereafter no change will be permitted. Since, the applicant did not submit any option to continue on the CPF scheme as such she was required to be brought under GPF scheme automatically This exercise was not done by the respondents and therefore the action of the respondents is not sustainable in the eyes of law. It has been further argued that after 01.09.1988, the respondents issued the fresh CPF number to its employees including the applicant instead of changing their category from CPF to GPF, but the applicant being member of teaching staff was never made aware of this fact that she is not permitted to opt for GPF or she is continuing under the CPF scheme only. The applicant cannot be held responsible in any manner for not getting the benefit of GPF Scheme as it was absolute failure on the part of the respondents to extend the benefit of OM dated 01.09.1988 to the applicant. In support of his arguments, the learned counsel for the applicant relied upon the judgment of the Hon'ble High Court of Madras in the Writ Petition No.19215/2015 (M.Subramanian vs. Commissioner, KVS & ors.), wherein the Hon'ble High

Court in para 12 of the said judgment has observed that “in absence of specific option exercised by the employee towards CPF Scheme, the employee was deemed to have come over to GPF Scheme. Therefore, the learned counsel for the applicant submitted that the case of the applicant is exactly identical to the case of M. Surbramanian (Supra), and therefore, she is also entitled for similar reliefs along with interest. The applicant also relied on the judgment of Hon’ble Rajasthan High Court in case of DB Civil Writ Petition No.5976/2017 passed in M.S. Panwar vs. CAT, Jodhpur Bench & Ors, wherein the Hon’ble High Court allowed the writ petition and directed the respondents to treat the petitioners as members of the CPF Scheme.

6. The respondents, on the other hand, besides relying on the previous submissions, have denied the averments of the applicant regarding non-exercising of option. He has argued that as per the CPF Scheme, regular deductions towards contribution to CPF with Management Contribution have been made through Pay Bill and Annual Statements have been issued to the applicant for each year. Moreover, the applicant was also issued Form No.16 to file Income Tax Return from

time to time duly mentioning the CPF deduction made and on the basis of that the applicant has filed his Income Tax return from time to time. He further argued that the department is unable to produce the option form submitted by the applicant because of lapse of 29 years and in support of his argument he relied upon the judgment of Hon'ble Supreme Court passed in Civil Appeal No.2876/2007, KVS vs. Smt. Jaspal Kaur, wherein it has been held that merely because the original document relating to exercise of option was not produced that should not be a ground to ignore the other ample materials produced to show exercise of the option. In the present case, the other documentary evidences clearly establishes the fact that applicant had exercised the option for the CPF Scheme and was also aware of the same. Therefore, the action of the respondents is perfectly legal, valid, justified, without perversity and with thorough appreciation of facts and therefore, no interference of this Tribunal is warranted.

7. Considered the rival contentions of both the parties and perused the material available on record.

8. MA No.308/2017 for condonation of delay in filing the OA is allowed, as the issue in question pertains to

recurring cause of action and further the Hon'ble Supreme Court in number of cases has held that the matters may be decided on merit rather than technicalities. Accordingly, the delay in filing the OA is condoned.

9. It is clear that as per the declaration of benefits under the Fourth Pay Commission w.e.f. 01.01.1986, the respondents vide their office memorandum dated 01.09.1988 permitted all the employees of the Sangathan who were in service as on 01.01.1986 and were still in service on 01.09.1988 to switch over from CPF Scheme to GPF Scheme unless an option was consciously exercised by them to continue under the CPF Scheme, and if no option was received by the Head of Office/Principal of the Vidhyalaya concerned by 28.02.1989, the employees would be deemed to have come under the GPF Scheme. It appears from the pleadings available on record that the applicant has never submitted any option to continue under CPF Scheme in pursuance to OM dated 01.09.1988 and therefore, her case ought to have been considered and governed by the pension scheme automatically for which no option was required. Since the applicant did not

submit any option, therefore, she was under bona fide impression that she is covered under GPF Scheme and she continued upto year 2015 under the CPF Scheme. Further, the respondents are also unable to place on record any option form submitted by the applicant. However, they submitted that the secondary records such as pay bills, annual deduction of CPF and Form 16 issued for filing of Income Tax Return shows that the applicant was treated under CPF Scheme. In support of their contention, the respondents also relied upon the Judgment of Hon'ble Supreme Court in Jaspal Kaur's case (supra). From perusal of the judgment, it appears that the said case is not applicable in the present case because the employee therein had opted to the CPF Scheme and therefore, the judgment of the Hon'ble Supreme Court was rendered in that context. As regard the case on hand is concerned, it is not unequivocally demonstrated by the KVS that an option was exercised by the applicant in favour of CPF Scheme. On the other hand, several representations were addressed by the applicant to the KVS seeking for conversion from CPF Scheme to GPF Scheme, though the applicant was not legally required to make such representations because of deeming clause.

10. As regards the legal position, the issue has been covered by the decisions of the Hon'ble High Court of Madras passed in W.P. No.19215/2015 (*N. Subramanian vs. The Commissioner of KVS & Ors.*) decided on 24.02.2017, wherein the Hon'ble High Court of Madras in para 13 held as under:-

"13. Accordingly, the order passed by the Tribunal in OA no.736/2013, dated 02.06.2015 is set aside and the prayer sought for by the petitioner therein, is granted. The official respondents are directed to convert the petitioner as pensioner under GPF Scheme forthwith, calculate and pay the revised pension including the arrears for which, he became eligible by such conversion. At the same time, the petitioner is also directed to refund the amount received by him towards CPF Scheme with 9% p.a. interest from the date when he received till the date of payment. It is also made clear that arrears of pension payable to the petitioner under GPF Scheme may be adjusted towards refund of PF amounts received by the petitioner with interest. In the event of not realizing the entire amount, the remaining portion amount may be refunded by the petitioner."

11. From the above, it could be seen that the law is very settled that in the absence of specific option exercised by the employee towards CPF Scheme, the employee was deemed to have come over to GPF Scheme. Therefore, the action of the respondents in treating the applicant governed by CPF Scheme after 01.09.1988 in absence of any option form submitted by her is hereby declared illegal. Accordingly the respondents are directed to convert the applicant as pensioner under GPF Scheme, in pursuance to the para 3

of OM dated 01.09.1988, and pay the revised pension including the arrears for which she became eligible by such conversion. It is made clear that the applicant shall refund the amount received by her towards CPF Scheme with 9% p.a. interest from the date when she received till the date of payment. It is also made clear that arrears of pension payable to the applicant under GPF Scheme may be adjusted towards refund of CPF amounts received by her with interest. In the event of not realizing the entire amount, the remaining portion amount may be refunded by the applicant.

12. The OA is thus disposed of in the above terms. No order as to costs.

(HINA P. SHAH)
MEMBER (J)