

Reserved
(On 29.01.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **11th** day of **February** 2019

Original Application No 330/00130 of 2016

Hon'ble Mr. Justice Bharat Bhushan, Member – J
Hon'ble Ms. Ajanta Dayalan, Member – A

Smt. Rajbala Srivastava, TGT (Science) W/o P.K. Srivastava, R/o House No. 55A/1, Sardar Patel Marg, Civil Lines, behind HDFC Bank, Allahabad.

. . .Applicant

By Adv: Sri V.R. Dwivedi

V E R S U S

1. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi, Pincode – 110016.
2. Joint Commissioner (Finance), Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi, Pincode – 110016.
3. Joint Commissioner, Regional Office, Kendriya Vidyalaya Sangathan, Varanasi, U.P.
4. Secretary Ministry of H.R.D. (Department of Education), Govt. of India, New Delhi.
5. Secretary Ministry of Personnel, Public Grievances and Pensions, D/o Pension and Pensioners Welfare Illrd Floor Lok Nayak Bhawan, Khan Market, New Delhi – 110003.
6. Finance Officer, Kendriya Viyalaya Sangathan, 18, Institutional Area Shaheedd Jeet Singh Marg, New Delhi.
7. Superintendent of Account, Kendriya Vidyalaya Sangathan, New Delhi.
8. Account Officer (Fund), Kendriya Vidyalaya Sangathan, 18, Institutional Area Shaheed Jeet Singh Marg, New Delhi.

. . . Respondents

By Adv: Sri D.P. Singh

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

The applicant Smt. Rajbala Srivastava has filed this OA feeling aggrieved by the order dated 22.09.2015 passed by respondent department rejecting her request for changing over from CPF to GPF-cum-Pension scheme. She has also sought direction to the respondents

to reconsider her case and grant her benefit of conversion from CPF to GPF-cum-Pension scheme.

2. The applicant joined KVS initially on 22.07.1981 and is presently working as TGT (Science) in KV at Allahabad for last several years.

3. According to the applicant, the KV staff had an option for conversion from CPF to GPF-cum-pension scheme. It is categorically stated in the OA [para 4 (iii)] and the learned counsel for the applicant also stated at bar that the applicant never gave her option to continue in CPF. It is also stated in the OA that as per KVS letter dated 01.09.1981, "all CPF employees were to be compulsorily transferred to GPF-cum-Pension Scheme". It is further stated that the respondents, as per common practice, invite options from the employees regarding conversion from CPF to GPF-cum-Pension scheme or vice-versa. The applicant now wants to covert from CPF to GPF-cum-Pension scheme in view of above and on the ground that pension is a matter of social security in old age specially for lady employees.

4. It is also stated in the OA that as per Government of India OM dated 01.05.1987, employees joining service in KVS on or after 01.01.1986 were to be governed only by GPF-cum-Pension scheme and were not have option of CPF scheme. It is also stated that as per this OM, only those employees who have not opted for CPF, could remain under CPF scheme. Further, as the applicant never opted CPF, she was to be covered in GPF-cum-pension scheme.

5. Learned counsel for the applicant stated that the applicant is still continuing in service. Meanwhile, some other employees have

approached different benches of this Tribunal and Ernakulam Bench vide order dated 22.03.2012 in OA No. 457 of 2011 has ordered that the applicant in that OA is to be covered only by GPF-cum-Pension scheme and his CPF account is to be converted to GPF account. This judgment of Ernakulam Bench was upheld by Hon'ble Kerela High Court vide order dated 13.08.2013. During pendency of SLP with Hon'ble Supreme Court, KVS vide letter dated 15.01.2014 (Annexure No. 3) implemented this decision subject to outcome of SLP filed by KVS in Hon'ble Supreme Court. Accordingly, Shri Jonshon P John, PGT Teacher in Hyderabad was provisionally allowed to be covered under GPF-cum-Pension scheme and allotted GPF number subject to outcome of SLP.

6. Learned counsel for the applicant also brought our attention to order dated 31.08.2012 (Annexure No. 4) in a bunch of OAs with leading OA No. 1210 of 2011, whereby similar benefit was granted to the petitioners therein subject to outcome of OP before Hon'ble Kerela High Court. This was done on the basis of decision of Ernakulam Bench of this Tribunal in OA No. 297 of 2011 dated 30.11.2011.

7. Learned counsel for the applicant also stated that in the year 2013, KVS vide letter dated 21.11.2013 issued an excel sheet calling for options and the applicant opted for conversion from CPF to GPF-cum-pension scheme therein. Copy of the excel sheet is annexed as Annexure No. 5.

8. The applicant made a representation in August 2015 (Annexure No. – 6) requesting for conversion which was rejected vide the impugned order dated 22.09.2015. This order is sought to be quashed in the present OA.

9. The case of the applicant is that having never opted for continuing in CPF, she is entitled for conversion from CPF to GPF-cum-pension scheme. She has relied upon judgments of various benches of this Tribunal, some of which were confirmed by respective Hon'ble High Courts and also the fact that pension is a social security measure in old age specially for lady employees.

10. Respondents have contested the claim of the applicant. Learned counsel for the respondents at the outset stated that KVS is an autonomous body, set up by the Ministry of Education, Government of India and is registered as a society. It has about 1100 Kendriya Vidyalaya situated all over India and 03 abroad. He further stated that for functioning of the Sangathan, a Board of Governors has been constituted and the rules and regulations for the Sangathan are contained in Education Code duly approved by the Board of Governors. The Commissioner of KVS is the Chief Executive who implements the policy approved by the Board of Governors and the expenditures of the KVS is fully financed by the Government of India.

11. Learned counsel for the respondents categorically stated that instructions dated 01.05.1987 relied upon by the applicant are applicable only to Civilian Central Government Employees who were subscribing to CPF under CPF Rules (India) 1962. The employees of statutory / autonomous bodies are not automatically covered by this OM. KVS being an autonomous body is, therefore, not covered by this OM. In case of KVS, Board of Governors in its meeting held on 31.05.1988 decided to implement mutatis mutandis this decision of Government of India for the KVS employees for changing over from CPF to GPF-cum-Pension scheme in the manner indicated in OM dated 01.05.1987. It was accordingly decided vide order dated 01.09.1988 that persons joining

service on or after 01.01.1986 shall be governed by GPF-cum-Pension scheme. However, employees who wish to continue in CPF scheme, were required to exercise a clear option to continue in CPF.

12. Learned counsel for the respondents stated that the applicant Smt. Rajbala Srivastava opted for CPF by filling up form in her own signature on 11.01.1989 in response to OM dated 01.09.1988. Photo copy of this option is enclosed as Annexure CA-1. It was also stated that at the time of exercising this option, she was well aware that the option once exercised shall be final. Learned counsel for the respondents stated that once the applicant has exercised the option to continue in CPF scheme, she could not be allowed to change over to GPF-cum-Pension scheme at this stage.

13. In this regard, learned counsel for the respondents relied upon the judgment of Hon'ble Apex Court in the case of Krishna Kumar vs. Union of India and others reported in (1990) 4 SCC 207, wherein it is held that once the option is exercised, that was final and could not be withdrawn later.

14. Learned counsel for the respondents also stated that the case of Johnson P John in OA No. 457 of 2011 is not applicable as Johnson P John was initially appointed on trial basis and SLP preferred before Hon'ble Supreme Court was not pursued as he was terminated under Education Code and GPF-cum-Pension scheme has not yet finally been extended to him. It is also stated that other cases of Shri S.K. Verma and others in OA No. 1027 of 2014 and 1039 of 2014 have not been considered by the Court on merit and have been disposed of on the basis decision in the case of Johnson P John (supra).

15. Learned counsel for the respondents argued that in the present case, law laid down by the Hon'ble Supreme Court in case of KVS vs. Jaspal Kaur and others will be applicable. In that case, Hon'ble Supreme Court has held that option once exercised for CPF will be final even if in original documents relating to option could not be produced. Copy of the judgment is annexed as Annexure CA-2. Learned counsel further stated that Hyderabad Bench of this Tribunal also took similar view vide order dated 04.07.2014 in OA No. 1271 of 2012, copy of which is available as Annexure CA-3.

16. Regarding excel sheet for the year 2013, learned counsel for the respondents stated that this was the data collected for statistical purpose for its inclusion in the proposal to be submitted to Ministry of Human Resources and Development (MHRD) for considering one time permission to change over from CPF to GPF-cum-Pension scheme for KVS teaching and non-teaching staff. The matter was placed before Finance Committee and Board of Governors which advised that the matter be referred to MHRD. The MHRD considered the matter in consultation with Department of Expenditure. It was finally informed vide MHRD letter dated 07.04.2015 that the Department of Expenditure has not approved the proposal and observed as under:-

“The employees of Kendriya Vidyalaya Sangathan who were in service as on 01.01.1986 and decided to opt for CPF made a conscious decision knowing well that option once exercised is final. Grant of one more option to such CPF subscribers in KVS could have repercussion elsewhere with such an option having to be extended to all CPF beneficiaries as well whose number is quite substantial”.

In view of this position, the proposal for one time permission for changing over from CPF to GPF-cum-Pension scheme for teaching and non-teaching staff of KVS was not agreed to. Learned counsel for the respondents concluded that as the applicant had opted for CPF scheme in response to OM dated 01.09.1988 vide her option dated 11.01.1989, she

was not entitled for change from CPF to GPF-cum-Pension scheme. Accordingly, the impugned order dated 22.09.2015 is legal and passed in accordance with law. In view of the above facts, learned counsel for the respondents argued that the OA is totally misconceived and devoid of merit and is liable to be dismissed.

17. Learned counsel for the respondents during arguments also stated at bar that the applicant has not come with clean hands before this Tribunal as even though she had opted for CPF in her own signature as per document now produced by the respondents in the counter affidavit, the applicant did not disclose this fact in the OA; and on the contrary stated that she never opted for CPF. Learned counsel for the respondents pleaded that not having come with clean hand before this Tribunal, the applicant did not deserve any consideration of her case.

18. We have heard learned counsels for both the parties and have gone through the pleadings of the case including written submissions. We have also given thoughtful consideration to the entire matter.

19. First of all, we note that KVS is an autonomous body set up by Government of India. It has its own Board of Governors which decides rules and regulations for KVS. Thus, instructions issued by Government of India for its employees are not automatically applicable to KVS. We also note that OM dated 01.05.1987 relied upon by the applicant side itself clearly states that the same is applicable to Civilian Central Government employees. This OM is, therefore, not applicable to KVS employees who are not Central Government employees. In fact, on a specific query raised by this Tribunal during the course of arguments at bar, learned counsel for the applicant very fairly admitted that KVS employees are not Central

Government employees. Hence, in our mind, there should be no dispute at all that the OM dated 01.05.1987 is not applicable to KVS staff.

20. We observe that based on this OM, KVS considered the issue in the meeting of Board of Governors held on 31.05.1988 and decided to implement the decision of Government of India *mutatis mutandis*. Instructions to this effect were issued vide order dated 01.09.1988. As per these instructions, persons joining services on or after 01.01.1986 were to be mandatorily covered under GPF-cum-Pension scheme. However, employees who wished to continue in CPF Scheme were required to exercise option to continue in CPF. In response to this order dated 01.09.1988, the applicant Smt. Rajbala Srivastava opted for CPF by filling form in her own signature on 11.01.1989 to continue in CPF scheme. At this point of time, she was well aware that option once exercised is final. Therefore, she may not now plead social security or other issues as justification for her request for conversion from CPF to GPF-cum-Pension scheme almost 30 years after her option. For all these years, employer's contribution alongwith her own contribution, was getting deposited in her CPF account. Now at the end of her service career, she wishes to deposit all the employer's contribution alongwith her own contribution of over 30 years, only to get benefit of pension. This is not found acceptable or justified.

21. We also note that the applicant cannot plead ignorance of the fact that she was a CPF contributory all along. This fact would have been obvious from pay she was receiving all through these long years when employer's contribution towards CPF alongwith her own contribution was getting deposited in her CPF account. No such contribution is made from the employer in case of the GPF-cum-Pension scheme and hence mere

perusal of pay details makes it clear whether the person is covered under CPF or under GPF-cum-Pension scheme.

22. This Court also notes that though the option has been exercised by her way back on 11.01.1989, she very categorically stated in the OA that she never opted for CPF. This stand taken by the applicant is contrary to the facts and amounts to an attempt to mislead the Tribunal with the aim of trying to get benefit of GPF-cum-Pension scheme. We, therefore, find merit in the respondents' side assertion that the applicant has not come with clean hand before this Tribunal. In fact, according to the respondents, the case does not even deserve consideration on merit. Still, we withhold ourselves from rejecting the claim purely on this ground. We, however, take serious and adverse view of this attempt made by the applicant.

23. Coming to the various judgments of the Hon'ble Courts and various benches of this Tribunal, we note that prima-facie it seems that there are judgments both in support of the applicant's side as well as respondents' side. However, if we look little deeper, we note that the case of Johnson P John of the Ernakulam Bench, upheld by Hon'ble Kerela High Court, was challenged before Hon'ble Supreme Court through SLP. However, as services of the applicant therein were terminated by the KVS, the matter was not pursued by the KVS before the Hon'ble Supreme Court. The respondents have categorically stated that the benefit of conversion from CPF to GPF-cum-Pension scheme has not finally been granted to this applicant. The other judgments of Madras Bench and Principal Bench of this Tribunal were based on the judgment of Ernakulam Bench. These judgments are not on merit, but are based on the case of Johnson P John, to whom the benefit of conversion from CPF to GPF-cum-pension scheme has not been finally extended as yet.

24. On the other hand, we note that there is a clear decision of Hon'ble Supreme Court in case of KVS vs. Jaspal Kaur and others where Hon'ble Supreme Court has clearly held that option once exercised for CPF would be final. In fact, this has been done by the Hon'ble Apex Court even in case where original document relating to option could not be produced. In the instant OA, the case is on even firmer ground as the option made by the applicant way back in the year 1989 has been placed on record by the respondents. During arguments, learned counsel for the applicant has never challenged the authenticity of this option. In view of the clear ruling of the Hon'ble Supreme Court holding that option once exercised for CPF is final, we find that the matter already stands settled by the Hon'ble Apex Court.

25. In view of all above, we are of the view that the applicant being KVS employee is not governed by the OM dated 01.05.1987 of Government of India and is instead governed by the instructions issued by KVS on 01.09.1989. The applicant opted for CPF in compliance thereto knowing fully well that option once exercised is final. The option made by her has been placed on record by the respondents. In view of the clear option of the applicant and the ruling of the Hon'ble Supreme Court in the case of KVS vs. Jaspal Kaur and others holding that CPF option once exercised is final and the other facts of this case as given in preceding paragraphs, we find that she is not entitled for conversion from CPF to GPF-cum-Pension scheme.

26. In view of all above, the OA has no merit and is dismissed. There is no order as to costs.

(Ajanta Dayalan)
Member (A)

(Justice Bharat Bhushan)
Member (J)

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