

**Central Administrative Tribunal
Ernakulam Bench**

**OA/180/00365/2018 &
OA/180/00820/2018**

Wednesday, this the 20th day of February, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

I. OA/180/00365/2018

1. K.K.Thomas, aged 66 years
S/o Late K.T.Kuriala
Retired Trained Graduate Teacher (Work Experience),
Kendriya Vidyalaya No.II, Naval Base, Cochin-4,
residing at Kudilil House, Kalampoor,
Piravom, Kerala-686 664.
2. M.J.Pauly, aged 66 years,
S/o Late Sri M.V.Jacob
Retired TGT (Social Studies),
Kendriya Vidyalaya, Puranattukara,
Thrissur, residing at Maliyakel Nambadan House,
Chittilappilly P.O., Thrissur-680 551.
3. N.Alima Beevi, aged 65 years
W/o Late Sri U.M.Ismail
Retired Primary Teacher, Kendriya Vidyalaya,
CRPF Pallipuram, residing at Darussalam,
Near CRPF Pallipuram-695 316.
4. E.B.Shobhana, aged 61 years,
W/o K.G.Sudhakaran T.R.,
Retired Primary Teacher, Kendriya Vidyalaya,
Puranattukara, Thrissur, residing at Kadavil Kottukkal
House, Puranattukara, Thrissur-680 551.
5. M.Parameswaran, aged 61 years
S/o Late Sri M.Vasudevan Namboodiri
Retired PGT (Mathematics), Kendriya Vidyalaya No.I,
Calicut, residing at Sinduram, Mozhikunnath Mana,
Cherpulassori P.O., Palakkad-679 503.
6. Bhanumathi K.P., aged 60 years,
W/o Sreekumaran T.R.,
Retired Primary Teacher,
Kendriya Vidyalaya No.II, Naval Base,

Cochin-4, residing at Sree Vihar, 58/1157,
George Eaden Cross Road-3,
Panampilly Nagar, Kochi-682 036.

7. N.K.Vimala, aged 67 years
W/o V.K.John
Retired PGT (Biology)
Kendriya Vidyalaya, Kadavanthra, Ernakulam.
Residing at Vakkechalil House, Thamarakkad,
Veliyannor P.O., Kottayam-686 634.
 8. M.R.Indira, aged 58 years,
W/o Rajasen V,
Primary Teacher, Kendriya Vidyalaya, Kadavanthra,
Ernakulam, residing at 35/2112-C, Friendship Colony (FN-24),
South Janatha, Palarivattom, Kochi-682 025.
 9. Elizabeth Esthappan, aged 67 years
W/o E.C.Esthappan
TGT (Mathematics),
Kendriya Vidyalaya INS Dhronacharya,
residing at H.No.31, Navagraha Lane,
A.C.S. School Road,
Kaloor, Ernakulam-682 017.
 10. Sathy Janardanan, aged 61 years
W/o O.E.Janardanan
Retired Primary Teacher, Kendriya Vidyalaya
Kanjikode, Palghat District, residing at Oledathu House,
Sree Nagar Colony,
P.O. Mautharoad, Palakkad-678 007.
- Applicants

[Advocate: Mr. M.R.Hariraj]

versus

1. The Kendriya Vidyalaya Sangathan
represented by its Commissioner
Kendriya Vidyalaya Sangathan Headquarters,
18, Institutional Area, Shahid Jeet Singh Marg,
New Delhi-110 602.
 2. Union of India, represented by the
Secretary to Government of India
Ministry of Human Resources Development
New Delhi-110 001.
- Respondents

Advocates:

[Mr.K.I.Mayankutty Mather rep by Mr.Vineeth Komalachandran for R1]

[Ms. Thanuja for Mr.K.C.Muraleedharan, ACGSC for R2]

II. OA/180/00820/2018

1. Ms.K.G.Sujaya, aged 62 years,
D/o Late Sri Govindan,
Retired Principal
Kendriya Vidyalaya, Kalpetta,
Wayanad District,
residing at Nalini's Aashiyana-XIII/304A,
Ponnam East, Kadirur, Kannur – 670 641.
2. Ms.Elsamma Ulahannan, aged 66 years,
W/o Sri M.K.Ulahannan,
Retired TGT (English),
Kendriya Vidyalaya No.I,
Naval Base, Kochi-4,
residing at Madathil House,
33/3364, Vennala P.O.,Kochi – 28.
3. Ms.N.S.Malathy Pisharasyar, aged 64 years,
W/o Sri K.N.Pisharoti,
Retired TGT (Sanskrit),
Kendriya Vidyalaya,
S.V.P.N.P.A. Shivarampally,
Hyderabad, residing at 7A,
Tower 3, PVS Iris, Kunnumpuram,
Desham, Aluva – 683 102.

Applicants

[Advocate: Mr. M.R.Hariraj]

versus

1. The Kendriya Vidyalaya Sanghatan,
represented by its Commissioner,
Kendriya Vidyalaya Sanghatan,
Head Quarters, 18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi – 110 602.
2. The Union of India represented by the
Secretary to Government of India,
Ministry of Human Resource Development,
New Delhi – PIN 110 001.

Respondents

[Advocate: Mr.Vineeth Komalachandran for Mr.K.I.Mayankutty Mather]

These two OAs having been heard together on 6th February, 2019, this Tribunal delivered the following common order on 20.02.2019:

ORDER

As the issue involved in these two OAs is similar and the facts identical, these OAs are disposed of through a common order:

2. The applicants are teachers under the first respondent, Kendriya Vidyalaya Sangathan, who are aggrieved by the refusal of the respondents to grant them pension and pensionary benefits reckoning the same under the Pension Scheme as per CCA (Pension) Rules. Instead, they are being treated as members of the Contributory Provident Fund Pension Scheme. For convenience, the reliefs sought in OA No.365/2018 only are reproduced hereunder:

(i) Quash Annexures A7 and A8.

(ii) Declare that the applicants ought to be treated as covered under Pension Scheme and as those who came over to Pension Scheme with effect from 1.1.1986 under Annexure A1.

(iii) Direct the respondents to compute, fix and disburse monthly pension and pensionary benefits due to the applicants under Pension Scheme with effect from the date of their retirement with all consequential benefits including arrears of pension and pensionary benefits with interest @ 12% per annum on delayed payment.

3. Central Government employees were governed by the Contributory Provident Fund (CPF) Scheme earlier. When the Pension Scheme was introduced as per CCA (Pension) Rules, option was given for those covered under the CPF Scheme to come over to the Pension Scheme. The 2nd respondent, Sangathan, being an autonomous body under the Government of India, rules of Central Government are mutatis mutandis applicable to the members of the Sangathan. The applicants were all appointed prior to 1.1.1986. As per Annexure A2 Office Memorandum dated 1.9.1988, all existing employees were given

option to either continue under the CPF or to join the Pension Scheme. In other words, the O.M. stated that all existing employees were to come over to the Pension Scheme from the existing Contributory Provident Fund Scheme except those who specifically opted to remain under CPF. The applicants chose to be retained under the CPF Scheme. As per O.M., at Annexure A2, the option to be exercised by employees for retention in the CPF Scheme was to be communicated by 31.01.1989. It is argued that the original Scheme which was introduced by the O.M. of the Government of India applicable to all Central Government employees, had directed that the option to remain under the CPF Scheme was to be exercised by 30.09.1987. In the case of the applicants in the OA, it is forcefully reiterated that they did not exercise any option by 30.9.1987. Apparently, what is to be inferred is that they did opt for the CPF Scheme in writing before the second deadline on 31.01.1999 prescribed by the employer Sangathan.

4. The applicants maintain that all except the 8th applicant in OA No.365/18 were continuing as temporary employees under the 2nd respondent when Annexure A2 was issued. The applicants submitted an option to continue under the CPF based on Annexure A2 before 31.01.1989 based on the then position of temporary employees. It is argued that it was wrong on the part of the respondents to ignore the change in circumstances brought on by the regularization and to pin them down with the option exercised at a time when CPF Scheme was more attractive and they themselves were only temporary employees. The 1st respondent was also wrong in having given an extended time limit as different from Annexure A1. The difference between the benefits under the CPF Scheme and the GPF Scheme which took its place is significant and the

benefits under the latter Scheme is far more beneficial to the employees when they retire. Several representations have been filed by the applicants before the authorities. They also approached the Hon'ble High Court of Kerala by filing WP(C) 33988/2011. It was dismissed as the original jurisdiction in the matter was vested in the Tribunal. The protestations made through various representations were of no avail, as the respondents chose to turn a deaf ear to the same.

5. As grounds, it is argued that the extension of time limit which appears to have entrapped the applicants was illegal. The Hon'ble High Court of Delhi had ruled that such exemption was illegal in the case of Delhi University which is also another autonomous body like the respondent Sangathan. Here also, it is maintained that the applicants did not offer any option. The applicants are put to great disadvantage and suffer from gross discrimination for having opted for the CPF Scheme. The pensionary benefits of persons who performed identical work for an identical length of time are entirely different depending on which Scheme he is a member of. Such discrimination and divergence is violative of Articles 14, 16 and 21 of the Constitution of India.

6. Respondents have filed a detailed reply statement wherein they have disputed the contentions of the applicants. It is admitted that the applicants were CPF optees since their joining the KVS. When the GPF was introduced, the applicants had submitted their option for continuing in CPF, because during the 51st Meeting of the Board of Governors of the Kendriya Vidyalaya Sangathan, that took place on 31st May, 1988 that it was decided to switch over from CPF to GPF Pension Scheme. Accordingly the new Scheme was to be extended to all existing employees as on 01.01.1986 except where an employee opted to be

retained in the CPF Scheme. The Office Memorandum issued on the subject made it mandatory that in any option the purpose should be in writing and should reach the office by 28.02.1989. The applicants herein had opted to continue in the CPF Scheme.

7. Sri M.R.Hariraj, learned counsel for the applicants laid stress on the unequal manner of treatment to which the applicants have been subjected. When they exercised their options as referred to in the OA, they were merely temporary employees and even if they proffered the options at that time, it should not be a continued cause of discrimination. The applicants are now retired and are suffering significant losses in the pension on account of the imbalance between the two Schemes. Sri Hariraj referred to a decision of the Principal Bench of this Tribunal in OA No.1865 of 2015 with OA No.1987 of 2015 wherein the contentions of the applicants therein had been upheld on the ground of inequality of treatment. He also referred to the judgment of the Hon'ble Supreme Court in Civil Appeal No.2723 of 2005-***Union of India and another vs. S.L.Verma and Others***, (2006) 12 SCC 53, which was in favour of the respondents therein on the ground that they had not given their options before the due date. Inequality in treatment was again the subject of a decision in favour of the applicants therein in WP No.28092 to 28094 of 2015 and W.M.P. Nos. 1 to 1 of 2015- ***Union of India and others vs. S.Subbiah and others***.

8. Sri Vineeth Komalachandran appearing on behalf of the respondents submitted that the applicants had, out of their own volition, opted to remain under the erstwhile CPF and had, all through these years, been aware of the contributory nature of the Scheme. Now after several years, they want to turn the clock back and go over to what is perceived to be the more advantageous

Scheme. As is made out in the O.M., on the subject, the option when exercised is final and there can be no revocation of the same. He called to his assistance the judgment of the Principal Bench in OA 942 of 2016 wherein the contention of the applicant therein that she had not exercised her option to remain in the CPF was rejected based on preponderance of evidence. According to him, the most relevant judgment is the one delivered by the Hon'ble Supreme Court in ***Union of India and others vs. M.K.Sarkar [2010 KHC 6063*** wherein the Hon'ble Court had considered the issue in detail and ruled as under:

“7. When a scheme extending the benefit of option for switchover, stipulates that the benefit will be available only to those who exercise the option within a specified time, the option should obviously be exercised within such time. The option scheme made it clear that no option could be exercised after the last date. In this case, the respondent chose not to exercise the option and continued to remain under the Contributory Provident Fund Scheme, and more important, received the entire PF amount on his retirement. The fact that the respondent was the head of his department and all communications relating to the offer of Eighth Option and the several communications extending the validity period for exercising the option for pension scheme, were sent to the heads of the departments for being circulated to all eligible employees/retired employees, is not in dispute. Therefore, the respondent who himself was the head of of his department could not feign ignorance of the Eighth Option or the extensions of the validity period of the Eighth Option. In fact, as noticed above, in his application before the Tribunal the respondent refers to all the options. He is careful to say that he was not 'intimated' about the contents of the last order relating to extension of the option, but does not say that he was unaware of the order extending the benefit of option. The respondent consciously chose not to exercise the option as he admittedly thought that receiving a substantial amount in a lump sum under the provident fund scheme (which enabled creation of a corpus for investment) was more advantageous than receiving small amounts as monthly pension under the pension scheme. In those days (between 1957 when the pension scheme was introduced and 1976 when the respondent retired) the benefits under the provident fund scheme and pension scheme were more or less equal; and there was a general impression among employees that having regard to average life expectancy and avenues for investment of the lump sum PF amount, it was prudent to receive a large PF amount on retirement rather than receive a small pension for a few years (particularly as there was a ceiling on the pension and as dearness allowance was not included in the pay for computing the pension).

8. From 1980 onwards, gradually the pension scheme became more and more attractive as compared to the Contributory Provident Fund Scheme, on account of various factors, like dearness allowance being

included in the pay for computing pension, ceiling on pension being removed and liberalization of family pension etc. But the respondent was well aware that not having opted for pension scheme and having received the PF amount on retirement, he was not entitled to seek switch over to pension scheme. But in 1996, when the respondent learnt that some others who had retired in and around 1973 to 1976 had been permitted to exercise the option in 1993-94 on the ground that they had not been notified about the option, he decided to take a chance and gave a representation seeking an option to switch over to pension scheme. Having enjoyed the benefits and income from the provident fund amount for more than 22 years, the respondent could not seek switch over to pension scheme which would result in respondent getting, in addition to the PF amount already received, a large amount as arrears of pension for 22 years (which will be much more than the provident fund amount that will have to be refunded in the event of switch over) and also monthly pension for the rest of his life. If his request for such belated exercise of option is accepted, the effect would be to permit the respondent to secure the double benefit of both provident fund scheme as also pension scheme, which is unjust and impermissible. The validity period of the option to switch over to pension scheme expired on 31.12.1978 and there was no recurring or continuing cause of action. The respondent's representation dated 8.10.1998 seeking an option to shift to pension scheme with effect from 1976 ought to have been straight away rejected as barred by limitation/delay and laches."

9. The pension schemes available to government employees have evolved over the years bestowing differing degrees of benefits to the members. The Contributory Pension Scheme (CPF) was one of the earlier introduced in this regard. Subsequently with the adoption of the 4th Central Pay Commission's recommendations, the GPF cum Pension Scheme which was entirely funded by the Government was adopted. When the Scheme was introduced it took the place of the earlier CPF with the rider that all employees shall henceforth be members of the GPF. However, keeping in mind the ambiguities involved, all those employees who were in position as on 01.01.1986 were given the option, if they so chose, to be retained in the CPF Scheme. As can be seen, after time passed by, those who opted to remain under the erstwhile CPF felt deprived as GPF proved to be significantly more beneficial. This resulted in a plethora of cases before various judicial forums, all seeking withdrawal of options exercised or

where no option was exercised, to remain in the CPF.

10. These OAs belong to the same category. The employer here is an autonomous body called Kendriya Vidyalaya sangathan. It has been mentioned that once the new Scheme is adopted, employees who want to remain under the old Scheme should necessarily give their option in writing. The applicants here are somewhat equivocal in the matter whether they had exercised their options. The primary contention is that at the time when options were called for, they were only temporary employees. Secondly they claim that as employees approaching at the fag end of service, they should not be held accountable for an option exercised several decades ago. In any case, as pointed out by the learned counsel for the respondents, a justified inference can be drawn that the applicants did indeed opt for remaining in the CPF based on the details of the Scheme as perceived by them at that time.

11. The Hon'ble Supreme Court in *KVS and Others vs. Jaspal Kaur and another, 2007 KHC 3637* had ruled that the inability of the authorities to produce original option would not take away the right of authorities to reject the respondent's belated request for switching over to the GPF Scheme. Further, the order of the Hon'ble Supreme Court in *Union of India and others v. M.K.Sarkar (Supra)* wherein an employee's claim to transfer his case back to the new pension scheme after having opted to remain under the CPF scheme 22 years ago was rejected, is relevant in the case on hand.

12. There can be no justification for agreeing to the contentions of the applicants in these cases. Their action to remain in CPF had been out of their own volition and had been deliberate because those who did not opt for earlier scheme would have perforce been included in the new scheme. Now after having

exercised their options several years ago, they cannot come back and claim to be part of the new scheme. If such demands are agreed to, it could only lead to functional anarchy in any organization. As the choice had been theirs and theirs alone, applicants cannot claim protection under the relevant articles of the Constitution claiming that they are being unequally treated. After examining all factors and with due regard to the judgments brought before me, I declare that these two OAs have no merit and are liable to be dismissed. Accordingly, the OAs are dismissed. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

aa.

Annexures filed by the applicants in OA 365/2018:

- Annexure A1: Copy of the O.M. No.4/1/87 PIC-I dated 01.05.1987.
 Annexure A2: Copy of the Memo No.152-1/79-80/KVS/Budget/Part.II dated 01.09.1988.
 Annexure A3: Copy of the representation submitted by the petitioner (comparison of the benefits given to the two classes of persons).
 Annexure A4: Copy of the judgment dated 10.01.2012 in WP(C) 33988/2011.
 Annexure A5: Copy of the judgment dated 19.09.2012 in WP(C) 32117/2011.
 Annexure A6: Copy of the representation dated 21.01.2013 of the Kendriya Vidyalaya CPF Subscribers Welfare Society.
 Annexure A7: Copy of the order No.110125/12-13/KVS/CPF to GPF/554 dated 27.05.2013.
 Annexure A8: Copy of the OM No.F19-20/2005-IFD dated 22.02.2006.
 Annexure A9: Copy of the representation dated 24.04.2013.
 Annexure A10: Copy of the letter No.110-125/2013-14/KVS/CPF to GPF dated 13.08.2013.
 Annexure A11: Copy of the letter No.110125/2014/KVS/CPF to GPF dated 5.5.2014.
 Annexure A12: Copy of judgment dated 24.08.2016 in LPA 410/2014.
 Annexure A13: Copy of the order No.110125/2018/KVS/PF/Court Case/Renuka Devi/3270 dated 31.7.2018.

Annexures filed by the respondents:

- Annexure R1(a): Copy of the letter No.F.3-14/2012-UT-2 issued by the Ministry of HRD.
 Annexure R1(b): Copy of the letter No.F3.14/2012-UT-2 issued by the Ministry of HRD.

Annexures filed by the applicant in OA No.180/00820/2018:

- Annexure A1: Copy of the O.M.No.4/1/87 PIC-I dated 01.05.1987.
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 Annexure A7: Copy of the representation dated 24.04.2013.
 Annexure A8: Copy of the letter No.110-125/2013-14/KVS/CPF to GPF dated 13.08.2013.
 Annexure A9: Copy of the letter No.110125/2014/KVS/CPF to GPF dated 05.05.2014.