

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00605/2015

Wednesday, this the 6th day of February, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Smt.Rachel Varghese,
Kallarackal House,
Chennithala South P.O.,
Mavelikkara, Kerala – 690 105.

...Applicant

(By Advocate – Ms.K.V.Bhadrakumari)

v e r s u s

1. Union of India represented by the Secretary
to the Ministry of Human Resources Development,
Department of Higher Education Public Grievance Section,
Room No.231 Ching, Shastri Bhavan, New Delhi.
2. Commissioner,
Kendriya Vidyalaya Sangathan (HQ),
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110 016.
3. Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, IIT Campus,
Powai, Mumbai – 400 076.

...Respondents

(By Advocate – Mr.K.I.Mayankutty Mather)

This application having been heard on 24th January 2019, the Tribunal
on 6th February 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The applicant retired from service as Teacher from Kendriya
Vidyalaya Mumbai Region on 31.10.2006. The applicant who opted the
CPF has meted out huge discrimination when compared to the optees of

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GPF Pension Scheme of the KVS employees. It is submitted that though the applicant had made a request to switch over from CPF to GPF, the same is not considered by the 2nd respondent. Due to these anomalies, the applicant who happened to become a CPF optee had received an amount of Rs.253000/- alone after her retirement for life long survival and sum of Rs.174/- as monthly income for her survival. It is stated that at the same time a GPF Pension Scheme optee could get a sum of Rs.2,25,000/- as commuted value of pension and Rs.18435/- as monthly pension. Besides medical facilities, medical allowance of Rs.300/- per month from 1.9.2008 onwards is also available to GPF optees. It is alleged that the 2nd respondent did not follow the CPF Rules and Govt. Orders properly. The 2nd respondent illegally and arbitrarily held that Rule 2(1)(ii)(b) is not applicable to KVS employees and dearness allowance, increments and interim reliefs and other allowances could not be considered for subscription and Govt.'s contribution. Aggrieved the applicant through this O.A has approached this Tribunal for redressal of her grievance seeking the following reliefs :

1. To call for the records leading to Annexure A-7 order and to set aside Annexure A-7 order as the same is illegal and arbitrary.
2. To direct the 2nd respondent to recalculate the CPF of the applicant by considering Dearness Allowance, Increment, Interim Reliefs and all other allowances for considering the CPF and also interest as on date, strictly following the CPF Rules and concerned orders issued by Govt. of India.
3. To direct the 2nd respondent to give an opportunity for the applicant to switch over from CPF to GPF so as to avoid further discrimination meted out to her, she being an optee of CPF.
4. To issue any other orders, directions and declaration appropriate in the facts and circumstances of the case.

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2. Notices were issued and the respondents filed their reply statement. In the reply it is stated that the applicant has retired from the service of the KVS with effect from 31.10.2006 on superannuation. She joined as Primary Teacher on 20.7.1979 in KVS and also opted for Contributory Provident Fund. The applicant has been confirmed as PRT with effect from 30.4.1984 in the service of the KVS. Thereafter the applicant was promoted to the post of TGT (Biology) and joined on 18.10.1994 and accordingly her pay was fixed in the TGT Grade. It is submitted that as the Vith Central Pay Commission her pay was fixed at Rs.14470/- + GP of Rs.4600/- with effect from 1.1.2006 in the Pay Band of Rs.9300-34800/-. The retirement benefits of the applicant was also paid accordingly. It is submitted that Kendriya Vidyalaya Sangathan has adopted Contributory Provident Fund (CPF) Rules, 1962 as amended from time to time. As per Rule 2(ii) of the CPF Rules, 1962 - "Emoluments" means pay, leave salary, or subsistence grant as defined in the Fundamental Rules and includes -

(a) Dearness Pay appropriate to pay, leave salary or subsistence grant, if admissible;

(b) Any wages paid Government to employees not remunerated by fixed monthly pay; and

(c) Any remuneration of the nature of pay received in respect of Foreign Service.

3. Further it is submitted that while Dearness Pay is to be included in the emoluments, Dearness Allowances is not included in the emoluments for the purpose of deduction of subscription of Contributory Provident Fund. A letter dated 15.2.2008 issued by the Department of Pension and Pensioners Welfare in favour of the husband of the applicant clearly clarifying that Dearness Pay is to be included in the emoluments, Dearness Allowances is

not included in the emoluments for the purpose of deduction of subscription of CPF. It is also submitted that as per Article 150-B of Accounts Code for KVS also clearly stipulating that the KVS shall contribute management share to the CPF subscribers monthly in whole rupees tentatively equal to 10 percent of emoluments on preceding 31st March to the Fund account of each subscriber. As per Government of India, Ministry of Finance, Department of Expenditure Office Memorandum No.F.No.7(26)/E.III/93 dated 27.9.1993 stipulates that the amount of Interim Relief will be *sui generis* viz. it will neither be termed as 'Pay' nor 'allowance' nor 'wage'. Hence, it will not be a part of pay for the purpose of calculating MSCPF. Again as per the existing orders, the pay as on 31st March of the preceding years is to be considered as emolument as per Rule 11 read with Rule 8 of the CPF Rules, 1962. The contribution of the applicant has been recalculated from 8.33% to 10.00% for 27 months with effect from March 1992 to May 1994 and the difference of Rs.716 has been paid to her. Further it is also submitted that the payment of Rs.7694/- was paid to the applicant towards the arrears of Management share and not CPF contribution of VI Pay Commission salary revision arrears. It is also submitted that the applicant has on her own volition made a conscious decision to continue in CPF knowing well that the option once exercised is final to continue in CPF Scheme. There is only technical break in service and as such the applicant cannot be treated as a new entrant to service. The 51st Meeting of the Board of Governors of the Kendriya Vidyalaya Sangathan on 1.9.1988, it was approved that the Kendriya Vidyalaya Sangathan will implement *mutatis-mutendis* decision taken by the Government of India on the recommendations of the Fourth Central Pay

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Commission for its employees for the change over from CPF to GPF cum Pension Scheme. Since, thereafter, there is no Memorandum permitting the applicant to switch over from the earlier option exercised and the applicant cannot be permitted to do so. On 22.2.2006, the Ministry of Human Resources Development vide Circular No.F.19-20/2005-IFD dated 22.2.2006 instructed that no employee will be permitted to switch over from CPF to GPF cum Pension Scheme henceforth and they will be continued to be governed by the CPF Scheme.

4. Learned counsel for the applicant filed an argument note relying on several judgments of the Hon'ble High Courts and Tribunals considering the issue relating to switching over from the CPF Scheme to the Pension Scheme.

5. Heard learned counsel for the parties at length and also perused the records. This matter has already been considered by the Hon'ble Apex Court in **Union of India & Ors. v. M.K.Sarkar 2010 (2) SCC 59** and also by the Principal Bench of this Tribunal in **Smt.Shashi Gupta v. Union of India & Anr. O.A.No.942/2016**. The crux of these two judgments are that option once exercised will not be changed. In view of the above, we are of the view that there is no merit on the side of the applicant. Accordingly, the O.A is dismissed. No order as to costs.

(Dated this the 6th day of February 2019)

ASHISH KALIA
JUDICIAL MEMBER
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E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

List of Annexures in O.A.No.180/00605/2015

- 1. Annexure A-1** – True copy of the Order No.16-4/2004-05/KVS/CPF to GPF conversion dated 8.2.2007.
- 2. Annexure A-2** – True copy of the representation dated 4.8.2010 submitted by the applicant before the 1st and 2nd respondents.
- 3. Annexure A-3** – True copy of the Office Memorandum dated 18.10.1999 issued by Government of India.
- 4. Annexure A-4** – True copy of the relevant page of the G.O.I F.No.38/37/08-P & PW(A) dated 2.9.2008.
- 5. Annexure A-5** – True copy of the representation dated 12.11.2013 submitted by the applicant before the 2nd respondent.
- 6. Annexure A-6** – True copy of the communication dated 2.4.2014 issued by the Principal to the applicant.
- 7. Annexure A-7** – True copy of the communication issued by the 2nd respondent dated 27.8.2014.
- 8. Annexure A-8** – True copy of the representation styled as 'Explanation to the report dated 27.8.2014'.
- 9. Annexure A-9** – True copy of the communication issued by the 2nd respondent to the 4th respondent dated 28.5.2014.
- 10. Annexure A-10** – True copy of the communication dated 24.3.2015 issued by Kendriya Vidyalaya Sangathan with due drawn statement of the applicant.
- 11. Annexure A-11** – True copy of the communication dated 4.3.2015 issued by the 2nd respondent.
- 12. Annexure R-2(a)** – True copy of the extract of the Rule 2(ii) of the Contributory Provident Fund (CPF) Rules, 1962.
- 13. Annexure R-2(b)** – True copy of the clarification letter No.3/3/07/P&PW(F) issued by the Ministry of Personnel Public Grievances and Pensions, Department of Pension and Pensioners Welfare.
- 14. Annexure R-2(c)** – True copy of the Office Memorandum No.1(3)/2008-E-II(B) issued by the Department of Expenditure, Ministry of Finance.
- 15. Annexure R-2(d)** – True copy of the extract of the Rule 11 and Rule 8 of the Contributory Provident Fund (CPF) Rules, 1962.
- 16. Annexure R-2(e)** – True copy of the Article 150-B of Accounts Code

for Kendriya Vidyalaya Sangathan.

17. Annexure R-2(f) – True copy of the Office Memorandum No.F.No.7(26)/E.III/93 issued by the Government of India, Ministry of Finance, Department of Expenditure.

18. Annexure R-2(g) – True copy of the Office Memorandum No.7/23/2008-E-III(A) issued by the Government of India, Ministry of Finance, Department of Expenditure.

19. Annexure R-2(h) – True copy of the Office Memorandum N.F.1/1/2008-IC issued by the Government of India, Ministry of Finance, Department of Expenditure, Implementation Cell.

20. Annexure R-2(i) – True copy of the Circular No.F.19-20/2005-IFD issued by the Ministry of Human Resources Development.

21. Annexure R-2(j) – True copy of the letter No.F.3-14/2012-UT-2 issued by the Ministry of HRD.

22. Annexure R-2(k) – True copy of the CPF Scheme nomination form submitted by the applicant.

23. Annexure R-2(l) – True copy of the KVS letter No.152-1/79-80/KVS/Budget/Part-II.

24. Annexure R-2(m) – True copy of the consent form of the applicant to continue under the CPF Scheme.
