

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00412/2017

with

Misc. Application No.290/00307/2017

This, the 13th day of December, 2018

Reserved on 28.11.2018

.....

CORAM:

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

...

Smt. Sudha Chauhan w/o Shri Vipin Kumar Singh, aged 61 years, by caste Rajput, R/o House No.6, Near MES Power House, AFS, Old Pali Road, Jodhpur (Rajasthan) (retired as PET under 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 Commissioner, Kendriya Vidhyalaya Sangthan, Regional Office, 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur 302015 (Rajasthan).
- 4.Principal, K.V.S., Air Force, Jaisalmer (Raj.)

RESPONDENTS

BY ADVOCATE : Mr.Avinash Acharya

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 Physical Teacher vide order dated 27th August, 1981 in KVS, and in pursuant to that she joined her duties and was posted at KV Rajpura-Dariba Mines, Rajsamand (Rajasthan). After joining her duty on the post of Physical Education Teacher, she opted for CPF Scheme and thereafter subsequently she neither opted for CPF nor given any option form to retain the same.

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 Provident 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 2011 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 2011, and thereafter she submitted an application dated 11.10.2011 to the individually as well as through the employees union to make the suitable correction and to consider and treat the applicant under GPF Scheme, but the grievance of the applicant was not redressed by the respondents rather she is not even replied by the respondents but vide letter dated 28.02.2012, the respondents informed respondent No.4 that the proposal for grant of permission for changing from CPF to GPF is pending under consideration. Thereafter the applicant again submitted an application on 10.03.2015 after having come to know about the letter dated 28.02.2012 with a request to the respondents to expedite the process of decision but nothing was done by the respondents. However, she came to know vide letter dated 15.01.2014 whereby some of the similarly situated employees were extended the same benefit in compliance of judicial order and after some time she also came to know through another letter dated 15.06.2015 whereby the respondents denied such change of option. It is the case of the applicant that she ought to be considered under the GPF Scheme in pursuance to the provisions of Para 3 of OM dated 01.09.1988 as she did not submit any option as required as per OM dated 01.09.1998 to continue under CPF Scheme. The applicant thereafter superannuated on 30th September, 2016 but her grievances were not redressed by the respondents, therefore, she submitted another application dated 10.10.2016 (Annexure-A/6) requesting the respondents not to make the payment of CPF and she

may be granted the benefit of GPF/Pension Scheme and accordingly retiral benefits may be paid. But the respondents paid her amount of Gratuity of Rs.10 lac vide Cheque No.059067 dated 08.11.2016 and CPF Rs.23,90,262/- vide Cheque No.059078 dated 22.12.2016. The applicant thereafter superannuated on 30.09.2016 and till that date the grievance of the applicant has not be redressed by the respondents, therefore, she served a legal notice to the respondents through her counsel on 01.08.2017 requesting the respondents not to make the payment of CPF and she may be granted the benefit of GPF/Pension Scheme, but of no avail. 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 (Annexure-A/1) to the applicant for considering her under the Scheme of GPF, has filed the present Original Application for the reliefs quoted above.

3. After issue notice to the respondents, they have filed their reply on 19.07.2018 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, as per Section 21 of the Administrative Tribunals Act 1985, the instant 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 to 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 with 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 it clearly shows that the applicant was well aware of the fact that the applicant was treated under CPF Scheme. It is further submitted that the applicant has exercised the option of continuous retention of Contributory Provident Fund Scheme (CPF) vide Option Form dated 18.01.1989 (Annexure-R/4) Therefore, the prayer of the applicant for not treating her under CPF Scheme cannot be acceptable. Hence there

is no illegality on the part of KVS to continue her under CPF Scheme. As per the MHRD Circular dated 22.02.2006, those employees who were in service on or before 31.12.2003 and who were governed by the CPF Scheme are not eligible for switch over to the GPF cum Pension Scheme. 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 has been further averred that the applicant on her own violation had opted for CPF Scheme vide Option form dated 18.01.1989, 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 she has opted herself for continuous retention of Contributory Provident Fund Scheme CPF vide option form dated 18.01.1989. Therefore, the legal notice sent by the applicant 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 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 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.

It has been further submitted by the learned counsel for the applicant that despite given option by the applicant to remain in CPF Scheme, she is also entitled to seek pension under the Pension Scheme as such option given by the employees cannot be held against him in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the GPF Scheme. Therefore, he submits that if the applicant is denied pension in the facts and circumstances of the case, it would certainly amount to discrimination, which per se constitutionally impermissible. Moreover the decision of the Delhi High Court and the contentions which were extracted above, would unequivocally support the claim of the applicant notwithstanding the fact that whether they exercised their option or not. 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 of Madras has disposed the Writ Petition and directed the respondents to convert the petitioner as pensioner under the GPF Scheme forthwith, calculate and pay the revised pension including the arrears for which, he became eligible by such conversion. 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 the case of 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 and submitted that the applicant has exercised/submitted the option of continuous retention of Contributory Provident Fund Scheme (CPF) vide Option Form dated 18.01.1989 (Annexure-R/4). 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. In the present case, Annexure-R/4 as well as 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, and without perversity and with thorough appreciation of facts. Therefore, no interference is required by this Tribunal.

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

8. From perusal of the pleadings, it is admitted fact 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 is clear from the pleadings available on record that the applicant has submitted his option form dated 18.01.1989 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 CPF Scheme only. Since the applicant herself has submitted her option of continuous retention of Contributory Fund Scheme (CPF) vide Option Form dated 18.01.1989, therefore, she now at this stage cannot claim that she may be permitted to switch over to GPF Scheme. Further, the respondents are also able to place on record the option form dated 18.01.1989 submitted by the applicant and the other secondary records such as pay bills, annual deduction of CPF and Form 16 issued for filing of Income Tax Return, which shows that the applicant was treated under CPF Scheme. Admittedly, in the present case, it is unequivocally demonstrated by the KVS that an option was exercised by the applicant in favour of CPF Scheme.

9 It is the contention of the learned counsel for the respondents that 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.

10. From perusal of the aforesaid judgment, it is clear that the same is applicable to the employees, who have not submitted their option form for continuing retention towards CPF Scheme. But, on the other hand, in the present case, the applicant submitted her option of continuous retention of CPF Scheme vide option form dated 18.01.1989. Therefore, the aforesaid judgment cited by the learned counsel for the applicant is not applicable to the present case as the facts and circumstances of the present case are different from the facts and circumstances of the aforesaid case.

11. I have also considered the submission of the learned counsel for the respondents that the Hon'ble Delhi High Court and the Hon'ble Madras High Court has permitted the employees to switch over from CPF Scheme to GPF Scheme whether they exercised their option or not. In this regard, I have once again perused the judgment of Hon'ble High Court of Madras passed in *N. Subramanian vs. The Commissioner & Others* passed in W.P. No.19215/2015 and M.P. No.1 of 2015 & WMP No.1197 of 2016, wherein the Hon'ble High Court of Madras held as under:-

“As regards the legal position, the issue has been covered by the decisions of the Hon'ble Supreme Court and the High Court of Delhi. In fact, the same Tribunal in similar applications, had allowed the claims of the employees therein, declaring that they were deemed to be pensioners under pension scheme. In fact, this Court has dismissed the batch of writ petitions in WP 28092 to 28094 of 2015 etc., filed by the Union of India, wherein, the Tribunal allowed the similar claims. In fact, in those cases, **option had been exercised by the employees in favour of CPF scheme**, but in spite of the same, applications were filed and allowed by the Tribunal and the writ petitions filed against those orders by the Union of India, came to be dismissed this Court vide order dated 05.01.2007, with the following observation in para 13:

“13. From the above, it could be seen that even the employees who have originally opted to remain in CPF Scheme and switched over to Pension Scheme because the same was being more beneficial to them, the Court has held that non-grant of better benefits by way of pension and denying the same to one set of employees per se discriminatory notwithstanding **the option exercised by the employees to remain in CPF scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme**. The Delhi High Court has adverted to several decisions of the Hon'ble Supreme Court and other High Courts and passed a detailed judgment in a batch of appeals. The issues raised before the Delhi High Court were identical and the Court has answered the issues in favour of the employees.

12. This Court, after hearing the arguments on either side, gave its anxious consideration with reference to the pleadings and the decisions of the Hon'ble Supreme Court and the decision of the Delhi High Court. The natural conclusion emanated from our anxious consideration will only lead to **hold that the respondent employees despite their option to remain in CPF Scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme**. Firstly, the said option given during the time of extended period has no sanctity in law. Secondly, such option given by the employees cannot be held against them in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the CPF Scheme, meaning that no seriousness attached to the cut of date prescribed originally by the Official Memorandum dated 1.5.1987. If these employees were denied pension in the facts and circumstances, it would certainly amount to discrimination, which per se constitutionally impermissible. Moreover, the decision of the Delhi High Court cited supra and the contentions which were extracted above, would unequivocally supported the claim of the respondent employees notwithstanding the fact that whether they exercised their option or not.

13. 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 order passed by the Tribunal dismissing the application is incorrect and cannot be sustained in law.”

12. I have also perused the judgment of Hon’ble High Court of Delhi passed in N.C. Bakshi vs. Union of India & Ors. (W.P. (C) No.5631/2010) & other connected matters, which was decided on 30.04.2010, wherein the Hon’ble High Court of Delhi has held as under:-

3.2 The aforementioned details would show that each of the petitioners in this batch of writ petitions **have opted to continue in the CPF scheme though after the cut-off date i.e, 30.09.1987** In the judgment delivered by me in the batch of writ petitions, in which the lead petition was numbered as: **WP(C) 1490/2006-1507/2006**, titled as: *Dr. R.N Virmani v. University of Delhi*, I have held that the provisions of the O.M dated 01.05.1987 required a positive option to be given only if, an employee was desirous of continuing with the CPF Scheme and that too by 30.09.1987 In the event, no positive option was received from an employee expressing his or her desire to continue with the CPF Scheme then, the employee stood automatically covered by the Pension Scheme by virtue of the deeming legal fiction created under the provisions of the O.M dated 01.05.1987 This conclusion, I had reached after examining the provisions of O.M dated 01.05.1987, in particular, clauses 3.1 and 3.2 and the form appended to it. As noted in the said judgement, this is also the view taken by the Supreme Court in the case of *Union of India v. S.L Verma*, (2006) 12 SCC 53. For the sake of brevity, I am not detailing out in extenso the rationale provided in the said judgement. The observations made in the said judgment be read as part of the present judgement.

13. I have also perused the judgment of Hon’ble Delhi High Court passed in Kanta Batra & ors vs. Union of India & Ors. [W.P.(C) 2036/2010] and other connected matters, which was also decided on 30.04.2014 by the Hon’ble Delhi High Court, wherein it has been held :

12. Having heard the learned counsels for the parties and perused the record, I must state at the very outset that the issues concerning the effect of the provision of the cut-off date in O.M dated 01.05.1987, and the aspect of delay and latches has already been dealt with by me, in the judgment delivered vis-a-vis the batch of writ petitions, in which the lead petition is, numbered as: **WP(C) 1490/2006-1507/2006** titled: *Dr. R.N Virmani v. University of Delhi*. Therefore, for the sake of brevity, those aspects are not referred to in detail in this judgment. On these aspects the said judgment be read in conjunction with this judgment.

12.1 Suffice it to say that I have come to the conclusion that O.M dated 01.05.1987, created a deeming legal fiction, which envisaged that if, a positive option was not given by employees, who were in service on 01.01.1986, to continue in the CPF Scheme by 30.09.1987, then, they automatically stood covered by the Pension Scheme. **Admittedly, the present set of cases are those in which the petitioners did give a positive option for continuation in the CPF Scheme prior to 30.09.1987.**”

17. Before I conclude I must only clarify that the argument of the petitioners that 2469 employees had been allowed to switch over even after they had their given their option to continue under the CPF scheme and, thus, the respondents had discriminated against this set of petitioners is, an argument, which cannot be countenanced in law. As is well settled, by several judgements of the Supreme Court that there is no equality in illegality (see *M.K Sarkar's* case, paragraph 25 at page 69). If, the University of Delhi, has wrongly permitted switch over to some of its employees to the Pension Scheme contrary to the provisions of O.M dated 01.05.1987 as adopted by it, it cannot be the ground to grant relief to the petitioners. Since, the case of those 2469 employees is not before me, I am not required to return a finding on them. As indicated by counsel for UGC and the Union of India, the expenditure, if any, on account of the said 2469 employees can only be classified under the head, ‘unapproved expenditure’ and, therefore, the financial burden if at all, in that behalf would lie only on the University of Delhi.

18. **In view of the above, in my view, the captioned writ petitions and the pending applications have no merit and the same are accordingly dismissed.** There shall, however, be no orders as to costs.”

14. Therefore, from perusal of all the aforesaid judgments, it is very clear that the High Court of Delhi as well as High Court of Madras has allowed the employees to switch over from CPF Scheme to GPF Scheme, who have either not given his option to switch over from CPF to GPF Scheme, or the said option has been submitted during the extended period of time. But, in the present case, the applicant has submitted his option of continuous retention of Contributory Provident Fund Scheme (CPF) vide option form dated 18.01.1989 [which is admittedly not submitted during the extended period of time as held in the judgment of N.C. Bakshi and N. Subramanian (supra)], therefore, both the cases are different from the present case. Further, the judgment of Kanta Batra & Ors. (supra) is squarely applicable in the present case,

because in the present case also the applicant did give a positive option form for continuation in the CPF Scheme on 18.01.1989 which is prior to 28.02.1989 i.e. last date of submission of option form.

15. Pertaining to MA No.307/2017 filed by the applicant with regard to condonation of delay, the applicant has not given any bonafide and justified reason for approaching this Tribunal belatedly, except a mere statement that the applicant is blind, disabled and is agitating the issue continuously with the respondents. It is the claim of the respondents that the OM dated 01.09.1988 for switching over from CPF to GPF Scheme was issued way back in 1988 and the applicant has approached this Tribunal belatedly only in 2017 by filing the present OA. As per Section 21 of the Administrative Tribunals Act, the applicant has to approach this Tribunal as per law. Also the applicant has not given any cogent reasons for the delay to be condoned in approaching this Tribunal. Therefore, on the ground of delay and laches, the MA does not survive and is accordingly dismissed.

16. In view of the discussions made in the above paras, the MA as well as OA have no merit and the same are accordingly dismissed. There shall, however, be no order as to costs.

(HINA P. SHAH)
MEMBER (J)