

CENTRAL ADMINISTRATIVE TRIBUNAL

No. M.A. 350/393/2018
M.A. 350/394/2018
M.A. 350/450/2018
M.A. 350/451/2018
M.A. 350/983/2017
M.A. 350/446/2017
O.A. 350/1006/2015

Date of order: 3rd May 2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

(ANIL KUMAR BASU & ORS. – VS. SAIL)

For the Applicant : Mr. D.P. Majumdar, Counsel

For the Respondents : Mr. N.C. Bhattacharya, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- (a) Rescind, revoke the impugned system of paying the applicants CPF system of Pension and in lieu thereof introduce and pay them the GPF system of pension which is fully DA linked, etc.;
- (b) An order be passed directing the applicants to refund the amount which they received at the time of retirement along with interest accrued thereon within specific time;
- (c) An order be passed directing the concerned Authority to cancel CP pension and introduce GPF Pension in respect of the retired employees of the Petitioners.
- (d) Leave may be granted under Rule 4(5)(a) of the Central Administrative Tribunal Procedure Rules, 1987 to the applicants to join together to file a single application as all of them are having the same cause and the nature of relief prayed for and that they have a common interest in the matter;
- (e) To pass such other order or orders, direction and directions as to Your Lordship may seem fit and proper."

2. M.A. No. 393 of 2018 and M.A. No. 394 of 2018 have been filed on behalf of applicant No. 126 praying for substitution and condonation of delay respectively. Similarly, M.A. No. 450 of 2018 and M.A. No. 451 of 2018 have been filed praying for substitution and condonation of delay respectively on behalf of applicant No. 129. MA No. 393 of 2018, however, reveals that the applicant No. 126 had expired on 20.7.2016 whereas the substitution application

hsl

MA. 393.2018, M.A. 394.2018, M.A. 450.2018, M.A. 451.2018, M.A. 983.2017, M.A. 446.2017 WITH
O.A. NO. 350.01006.2015

(although with a prayer for condonation of delay). As the prayer has been made beyond 90 days of expiry of the applicant No. 126, the O.A. abates also with respect to applicant No. 126 as per Rule 18 of the Central Administrative Tribunal (Procedure) Rules, 1987. Similarly, in M.A. 450 of 2018 the date of expiry of applicant No. 129 is recorded as 12.3.2017, whereas the substitution application has been filed on 21.6.2018 (although with a prayer for condonation of delay), which is beyond 90 days of expiry of the applicant and, hence, the O.A. abates with respect to applicant No. 129 under Rule 18 of the Central Administrative Tribunal (Procedure) Rules, 1987.

M.A. No. 446 of 2017 for joint prosecution is allowed on grounds of commonality of cause of action and common interest.

M.A. No. 938 of 2017 which has been preferred for deletion of names of applicants Nos. 2, 6, 42, 115, 126, 129, 166 and 206 on grounds of their expiry is allowed and the cause title will stand amended accordingly.

3. The instant Original Application is hereafter taken up for adjudication. The submissions of the applicants, as made through their Ld. Counsel, is that the applicants are all retired employees of the Steel authority of India Limited which controls Durgapur Steel Plant as well as Alloy Steel Plants. The said respondent No. 1, however, did not allow the retired employees to switch over to GPF Cum DA Linked Pension, compelling the applicants to undergo financial stress and, that, although the applicants made several representations praying for switching over from CPF to GPF, their prayers were rejected by the respondent authorities and, hence, the instant Original Application.

The applicants have furnished, inter alia, the following grounds in support of their claim:-

(a) The CPF Scheme which prevailed during the service tenure of the applicants is not a DA linked Scheme and hence switching over to the DA linked GPF Scheme would ameliorate the economic distress of the retirees.

(b) The decision of the respondents that such switching over from CPF to
GPF/Pension Scheme had never been in vogue in SAIL, is baseless and
unreasonable.

(c) That, as Pension Schemes have been introduced for employees of
Government of India as well as for certain Public Sector Units and CPF
Schemes have been adopted by other entities, the maintenance of such
dual system of Schemes is discriminatory against the applicants being
violative of Article 14 and 16 of the Constitution of India.

4. Per contra, the respondents have argued extensively. *Prima facie*, the
respondents have assailed the Original Application on grounds of delay alleging
that the first representation dated 26.2.2012 praying for switching over was
rejected and communicated by the respondent authorities on 30.5.2012
(Annexure A-2 to the O.A.) and that the said decision was not challenged by the
applicants till the filing of their O.A. on 30.6.2015. The respondents have further
attacked the Original Application on grounds of limitation on the ground that the
applicants have obtained their retiral benefits as early as in the year 1992 but
have decided to approach the judicial forum after a lapse of almost 24 years. In
support, the respondents have cited the decision of the Hon'ble Apex Court in
Chairman, U.P. Jal Nigam & Anr. V. Jaswant Singh & anr. AIR 2007 SC 924
wherein it was held that when the respondent-employees acquiesced in
accepting retirement and did not challenge same in time, grant of relief at belated
stage was liable to be denied.

The respondents have also alleged non-joinder of necessary parties such
as the "SAIL, DSP PF Trust", "SAIL, ASP PF Trust" and the "Regional Provident
Fund Commissioner (RPFC)" in the original application.

The respondents have further agitated that the Central Provident Fund
Commissioner, to whom a representation dated 29.8.2011 was addressed by the
applicants, has not been impleaded as a party respondent by the applicants.

hsc

On Merit the respondents have contended as follows:-

That, the Steel Authority of India Limited, i.e. the respondent No. 1, is a Government company within the meaning of Section 617 of the Companies Act, 1956 and, that the employees of Steel Authority of India Limited cannot be termed as Government employees.

That, the employees of public sector companies are not entitled to DA Linked GPF benefits unlike their counterparts who are essentially Government employees.

That, the employees of SAIL are not guided by the CCS (Pension) Rules, 1972 but by various policy decisions taken from time to time by the Board of the Steel Authority of India Limited and that the respondent No. 1 had never introduced a Pension Scheme / DA Linked GPF Scheme for its employees.

That, the applicants were guided by the CPF System in term of Provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and none of the Trade Unions had approached the respondent authorities praying for switching over to the DA Linked GPF Scheme.

The respondents have further argued that, under EPS 1995, an option was offered to those who were separated between 1993 and 1995 as to whether the said employees would opt to continue under EPS 1995 or to continue with the Family Pension Scheme, 1971 and that there was no further option in the statutory scheme of EPS 1995. The applicants in the instant O.A., however, had not raised any issue regarding the options under EPS 1995 whereby options to switch over to DA Linked GPF from CPF were never offered and as the basic EPS remain unchallenged, the demand of the applicants is not founded on any statutory premise.

The respondents have also controverted the averments of the applicants that there was discrimination amongst the employees as because in Steel Authority of India Limited, there is no provision of GPF or pension, and hence, the scope of discriminating amongst the employees of respondent No. 1 does not

arise. The respondents have further called upon the applicants to strict proof by documentary evidence that any discrimination has been meted out to the applicant vis-à-vis other employees of the respondent No. 1.

5. The primary issue to be adjudicated upon in the instant O.A. is whether the applicants, who are the retired employees of respondent No. 1, are entitled to switch over from CPF to GPF/ Pension Scheme after separation from the respondent authorities.

6.1. At the outset, we note the background of the formation of the Steel Authority of India Limited, i.e. the respondent No. 1, as a public sector company. Section 617 of the Companies Act, 1956 states as follows:-

"617. Definition of "Government Company".— For the purposes of [this Act] Government company means any company in which not less than fifty-one per cent of the [paid-up share capital] is held by [the Central Government, or by any [Statement Government or Governments, or partly by the Central Government and partly by one or more State Governments, [and includes a company which is a subsidiary of a Government company as thus defined].]

The following is inferred from an analysis of Section 617 of the Companies Act, 1956:-

- (a) Section 617 of the Companies Act, 1956 refers to "Government Company".
- (b) The share holding of paid-up share capital by Central Government or by any State Government or Governments or partly by the Governments should not be less than 51%.
- (c) Includes a company which is a subsidiary of a Government company as defined.
- (d) For the purpose of Article 12, the corporate veil would be lifted to ascertain the face of instrumentality or agency of State.[as held in *Central Inland Water Vs. Brojo Nath Ganguly & anr., AIR 1986 SC 1571*]
- (e) The fact that all its shares are held by the President and certain officers of the Central Government does not make the company an agent either of the President or the Central Government as held in *Heavy Engineering Mazdoor Union v. State of Bihar, AIR 1970 SC 82.*

Being a public sector company, the policy decisions of such company are decided by the Board of Directors of the Company. Accordingly, any decision on the retirement benefits of the employees of respondent No. 1 will be taken by the Board of Directors of the Company.

While the respondents have denied that any such retirement policy of GPF cum DA linked Pension is in vogue as per their communication dated 27.10.2014 (Annexure A-7 to the O.A.) and also as per their response on the applicant's letter addressed to Central Provident Fund Commissioner (Annexure A-2 to the O.A.), the applicants have failed to furnish any policy decision of the Board of Directors of respondent No. 1 whereby it could be established that GPF cum DA Linked Pension Scheme was ever introduced in SAIL at any point of time when the applicants were in service or after their superannuation.

In *Gulab Chand Agarwal v. State of Bihar*, (2007) 15 SCC 402 the Hon'ble Apex Court held that where A retired from service on 31.1.1992 whereas the respondent municipality adopted pension rules in August, 2001, the employer municipality was not required to afford an opportunity to A to migrate to the pension scheme unless there were express provisions therein.

The respondents have relied on *Pepsu Road Transport Corporation, Patiala and Another v. S.K. Sharma & others* to substantiate the Hon'ble Apex Court's decision that entitlement to pension are guided by regulations governing the service conditions and in the instant case, as the temporary employees of a Government department on their transfer to a public road transport corporation did not continue to be government servants they were, therefore, not entitled to government pension instead of CPF.

The Hon'ble Apex Court further held that the respondents had accepted to continue as employees of the Corporation and, hence, on superannuation were entitled to receive only the benefits of CPF and gratuity, as admissible to them, under the then prevailing regulations of the Corporation. After acceptance thereof, no further relationship subsisted between the Corporation and the

respondents and their further claim that the Corporation should treat respondents as Government servants entitled to pension was wholly untenable.

In *Heavy Engineering Mazdoor Union (supra)*, it was clearly held that a government company Under Section 617 of Companies Act, 1956, is not an agent either of the President or Central Government and hence its employees cannot claim same policies as Central Government employees.

6.(2). The applicants have robustly averred that, while organizations such as banks, DVC, HSCL etc. have introduced the GPF cum Pension Scheme, organizations such as SAIL, BHEL and others continue with the CPF Scheme at variance with the further organizations.

Hence, admittedly, it was a conscious and deliberate decision on behalf of respondent No. 1 to continue with the CPF Scheme. According to the respondents, no demand have been raised otherwise by the Employees' Union for switching over to GPF cum Pension Scheme.

In *Pushkar Nath Nehru v. Administrator, Srinagar Municipality, AIR 1987 SC 1311*, the Hon'ble Apex Court held that when services were terminated before the statutory provisions conferring pensionary benefits came into force, the terminated employee was not entitled to claim pension.

In this case, the applicants and respondent No. 1 have separated prior to introduction of any GPF cum Pension Scheme. Hence, the scope of according benefits of GPF cum Pension Scheme or being allowed to switch over is not sustainable if not otherwise so entitled under the scheme.

The applicants have vociferously averred that discrimination was meted out to them in that while Government employees, employees of banks and certain public sector undertakings were entitled to GPF cum Pension Scheme, the respondent No. 1 had subjected them to acute discrimination by depriving them of switching over.

In *Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709*, the Hon'ble Apex Court, after considering *D.S.Nakara & ors. v. Union of India*

(1983) 1 SCC 305, had held that when two sets of employees of the same rank
retired, there was no pension scheme and when the other set retired, a pension
scheme was in force.

Hence, even if DVC or HSCL had introduced a Pension Scheme where the
respondent No. 1, Steel Authority of India Limited, did not, the employees retiring
in SAIL cannot allege discrimination vis-à-vis employees of DVC or HSCL as
because the Board of Directors of different Public Sector Units, after assessing
their financial position and other necessary conditions, would adopt a conscious
decision on terminal benefits of their employees.

In *R. Prabhakar v. Canara Bank*, 2012 (10) JT 178 it was held that those
who have failed to show any pre-existing right in their favour either in the
Statutory Settlement policy and who are not covered by the statutory settlement,
will not be covered by the Scheme of Pension introduced by the banks with effect
from 1.11.1993.

In the instant matter, the applicants have not been able to prove that there
was ever any settlement policy, retirement policy or decision of the Board of
Directors of the respondent No. 1 that had agreed to introduce GPF cum Pension
Scheme in Steel Authority of India Limited. Their allegation of discrimination vis-
à-vis Government employees or employees of other public sector undertakings
which had introduced GPF cum Pension Scheme, also does not hold water as
because in a government company, service conditions are decided by the
decisions of the Board of Directors and are translated into service bye-laws or
service regulations in accordance with the Memorandum of Association and
Articles of Association of the Company. The applicants have agitated in their
rejoinder that they had indeed moved the Office of the Central Provident Fund
Commissioner requesting for switching over but the said appeal was
unreasonably rejected by an officer of respondent No. 1. It is an established
procedure that the Central Provident Fund Commissioner could have referred

MA. 393.2018, M.A. 394.2018, M.A. 450.2018, M.A. 451.2018, M.A. 983.2017, M.A. 446.2017 WITH
O.A. NO. 350.01006.2015

their request to their employer, namely, respondent No. 1, who would thereafter respond as per Annexure A-2 to the O.A. Although the applicants have referred to the respondent No. 1's violent disregard of the provisions of Company's Act, 1956, they have not been able to establish as to which is the exact provision which was violated by the respondent No. 1 in not allowing the applicants in switching over from CPF to GPF.

Hence, the prayer of the applicants, not being substantiated by any policy decision, bye-laws or regulations of the respondent authorities and also not having established any substantive discrimination amongst the employees of respondents No. 1 itself, the O.A., being devoid of merit, does not merit consideration given the past and present policy decisions of Respondent No. 1.

If, however, the respondent No. 1, namely, the Steel Authority of India Limited, decides to introduce GPF cum Pension Scheme for its employees at any point of time, the competent authority in respondent No. 1, shall, consider the claim of the applicants in this O.A. in the light of the Scheme for enabling them to switch over to the GPF-cum-Pension Scheme. The fact that the applicants have separated from respondent No. 1 should not come in the way for considering their claims on which the applicants have been agitating since 2011, if they are otherwise eligible in terms of the Scheme.

7. The O.A. is, therefore, disposed of with the above directions. There will be no orders on costs.

Rev. Manohar Chatterjee
Administrative Member

(Bishnu Baruah)
Judicial Member

SP