

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00795/2016

Dated Thursday the 19th day of July Two Thousand Eighteen

PRESENT

HON'BLE MR. R. RAMANUJAM, Member (A)

P.V.Sellaperumal,
No. 9, First Avenue,
DAE Township,
Kalpakkam PO.603102.Applicant

By Advocate M/s. D. Nagasaila

Vs

1.Union of India,
rep by the Secretary to the Government,
Dept of Atomic Energy,
OYC Building, CSM Marg,
Fort, Mumbai 1.

2.The Director,
Indira Gandhi Center for Atomic Research,
Kalpakkam 603102.Respondents

By Advocate Mr. K. Rajendran

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"a. Set aside the order no. IGCAR/WP17871 of 2013/Admn O&M/706 dt. 21.05.2015, issued by the II respondent,

b. Direct the respondents to comply with the High Court order dt. 03.11.2014 in WP 17871 of 2013 and permit the applicant to exercise the option of switching from CPF to Pension Scheme,

c. And pass such other or further orders as this Hon'ble Tribunal may deem fit and proper, and consequently direct the respondents to implement the order and thus render justice."

2. It is submitted that the applicant was appointed to the post of Tradesman by an order dt. 06.02.1973 in the 2nd respondent institution. He was required to join the Contributory Provident Fund scheme as per the then prevailing rules which he did. The applicant was given an option either to continue to subscribe to CPF or move over to pension benefits later. Pursuant to such order, the applicant opted to continue in CPF by an option dt. 15.01.1981. Later, Ministry of Personnel, Public Grievances and Pensions by OM dt. 12.10.1992 declared a uniform policy for scientific and technical personnels for change over from CPF to Pension scheme. Accordingly, persons who had not completed 20 years of service from the date of appointment were given another option to move over from CPF to Pension scheme any time before they completed 20 years of service. However, the said OM dt. 12.10.1992 was reviewed by the Ministry concerned and by

Annexure A2 OM dt. 23.07.1996, it was directed that status quo ante as on 12.10.1992 would be maintained.

3. When the matter stood thus, subsequently another OM dt. 12.10.2000 came to be issued by the 1st respondent with regard to extending one more option to switchover to the pension scheme in respect of the Technical employees of the department who joined prior to 01.08.1992 and who had not completed 20 years of service as on 01.08.1992 and had not exercised option to come over to pension scheme. Accordingly, the applicant exercised the option to move over from GPF to pension by letter dt. 12.12.2000 to which he received a reply dt. 26.04.2001 informing that there was no provision under the extant rules to allow a second option to technical staff who had completed 20 years of service as on 23.07.1996.

4. Aggrieved by the rejection of his option, the applicant filed OA 1458/2010 before this Tribunal which was dismissed on 30.11.2012. The applicant filed WP no. 17871/2013 thereagainst which was allowed on 03.11.2014 quashing the order of the Tribunal dt. 30.11.2012 and directing the respondents to consider the case of the petitioner to switchover from CPF to pension scheme, if the petitioner was otherwise eligible for the same.

5. Learned counsel for applicant would submit that the Hon'ble High Court, in the said order had clearly held that the rejection of the

petitioner's option by a communication dt. 26.04.2001 was misplaced and unsustainable. If the petitioner had completed 20 years of service after 01.08.1992, he was eligible to exercise his option pursuant to the OM dt. 12.10.2000. The contention of the respondents therein that no option was exercised by the petitioner before 27.11.2006 was contrary to the facts. Admittedly, the petitioner had not completed 20 years of qualifying service as on 01.08.1992 in view of the admitted fact that the petitioner joined service only on 06.02.1973. In spite of such clear findings recorded by the Hon'ble High Court, the respondents have now passed the Annexure A10 order dt. 21.05.2015 rejecting the option of the applicant to move over from CPF to pension scheme precisely on the very same ground which was held to be unsustainable by the Hon'ble High Court. Accordingly, the impugned order is liable to be quashed and set aside and the respondents directed to pass orders accepting the option of the applicant, it is contended.

6. Learned counsel for the respondents would, however, submit that the OM of Department of Pension and Pensioners Welfare dt. 12.10.1992 allowed scientific and technical personnel who had not completed 20 years of qualifying service as on 01.08.1992 and were still under the CPF scheme on that date to be regulated at par with fresh entrants in terms of the provision of para 2 of the OM. Accordingly, scientific/technical personnel would have one option to

exercise any time but not later than completion of 20 years of qualifying service to switchover from CPF to GPF scheme. Though the above OM was applicable to him, the applicant had not opted switchover to GPF scheme before completing 20 years of qualifying service. It is pointed out that the applicant had completed 20 years of qualifying service on 05.02.1993. The subsequent OM of Department of Pension and Pensioners Welfare dt. 23.07.1996 directing restoration of status quo ante as existed prior to the issue of OM dt. 12.10.1992 did not hurt the interests of the applicant in any manner as he had not exercised the option to move over to the pension scheme before 05.02.1993. Accordingly, the applicant continued to be correctly covered under the CPF scheme based on the option submitted by him on 15.01.1981.

7. Learned counsel for the respondents would further argue that the DAE OM dt. 12.10.2000 granted an option to technical personnel who joined service prior to 01.08.1992 and had not completed 20 years of qualifying service as on 23.07.1996 but continued under the CPF scheme to be exercised within six months to switchover to the GPF/Pension scheme. As the applicant had completed more than 20 years of qualifying service on 23.07.1996, the OM was not applicable to him and therefore, the option exercised by the applicant in pursuance of such OM was irrelevant and could not be accepted. As

for the order passed by the Hon'ble High Court in the aforesaid WP, it is contended that the impugned order dt. 21.05.2015 had been passed in compliance of the order of the Hon'ble High Court. The Hon'ble High Court had not issued any direction to the respondents to accept the option of the applicant but had only directed consideration of the case of the applicant, if he is otherwise eligible. He also opposes any attempt to reagitate the issue before the Tribunal when the Hon'ble High Court had already considered the matter and passed orders.

8. I have considered the facts of the case as well as the pleadings and submissions made by the rival sides. It is not in dispute that the applicant agitated the very same grievance before this Tribunal in OA 1458/2010 which was disposed of by order dt. 13.11.2012. The applicant filed WP no. 17871/2013 thereagainst and the Hon'ble Madras High Court set aside the order of the Tribunal and directed the respondents to consider the case of the petitioner if he was otherwise eligible after recording certain findings. It appears that the impugned order has been passed availing of the room available under such direction. As such, if the applicant is aggrieved with non-compliance of the order of the Hon'ble High Court, he is at liberty to adopt an appropriate legal remedy. However, a fresh round of litigation before the Tribunal agitating the very same facts and seeking very same relief does not seem to be an appropriate legal remedy.

9. On a careful perusal of the order of the Hon'ble High Court, it appears that the fact that the applicant had failed to exercise an option in terms of the OM of 1992 before completing 20 years of service had not been stressed by the respondents. It is the respondents' contention that the policy decision contained in the 2nd paragraph of the OM dt. 12.10.2000 which granted an option to all the technical personnel of the DAE who joined prior to 01.08.1992 and had not completed 20 years of service and were still under CPF to come over to pension scheme as a special case, was to be read in the context of and in continuation of what was stated in the first paragraph of the same OM, viz., that the matter regarding extending one more option to switchover to pension scheme in respect of technical employees of the department who joined service prior to 01.08.1992 and had not completed 20 years of qualifying service on 23.07.1996 and not exercised the option to come over to the pension scheme was taken up with the nodal Ministry. The applicant having completed more than 20 years of qualifying service as on 23.07.1996 could not be considered eligible to switchover from CPF to GPF, it is argued. However, according to the applicant, this ran counter to the finding of the Hon'ble High Court that the applicant was entitled to exercise option in terms of memorandum dt. 12.10.2000, though the respondents appear to have availed of the room left in the order of the Hon'ble

High Court to consider the case of the applicant 'if the petitioner is otherwise eligible'.

10. As the matter stands today, the Hon'ble High Court had passed an order in alleged compliance of which the impugned order has been passed. It is also submitted before the Tribunal that the applicant herein had filed a contempt petition before the Hon'ble High Court against the very same impugned order and the matter is pending before the Hon'ble Madras High Court. Under the circumstances, I am of the view that the matter of interpretation of the Hon'ble High Court's order and whether the impugned order has been passed in compliance or violation thereof must be left to the Hon'ble High Court itself as it would not be possible for this Tribunal to preempt the view to be taken by the Hon'ble High Court on the action of the respondents in the said contempt case.

11. As the relief sought by the applicant in this OA would squarely depend on the view to be taken by the Hon'ble High Court which would inevitably be based on the interpretation of its own order, there is nothing for this Tribunal to adjudicate. Accordingly, this OA is disposed of with the aforesaid observations. No order as to costs.

(R. Ramanujam)
Member(A)
19.07.2018

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