

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. No.1360/2016
MA No. 1350/2016
MA No. 721/2019

Order Reserved on: 31.07.2019
Order Pronounced on: 08.08.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

1. Haspatal Karamchari Panchayat,
National Institute of Tuberculosis &
Respiratory Diseases,
Sri Aurbindo Marg,
QutabMinar, Mehrauli,
New Delhi-110030
Through its Secretary
Shabhu Kumar Singh
2. Yogendra Singh, Age 48 years,
Date Entry Operator,
S/o late Rajmal Singh,
House No.62, Street No.6,
Braham puri, Delhi-110053 - Applicants

(By Advocate: Mr. Sukant Vikram)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Health & Family Affairs,
Nirman Bhawan,
Maulana Azad Road,
New Delhi-110001
2. National Institute of Tuberculosis &
Respiratory Diseases,
Through its President,
Sri Aurbindo Marg,
QutabMinar, Mehrauli,
New Delhi-110030
3. Union of India
Through its Secretary,

Ministry of Finance,
North Block, New Delhi

- Respondents

(By Advocate: Mr. Rajeev Kumar)

ORDER

MA No. 721/2019 seeking amendment in the OA is allowed in terms of the order passed by the Tribunal on 13.12.2018. MA No. 1350/2016 for joining together is allowed for the reasons stated therein.

2. The applicants, through the amended OA, have sought the following reliefs:-

- “a. Call for the records of the present case;
- ab. Set aside and quash the letter dated 01.07.2016 issued by the Ministry of Health & Family Welfare to Respondent No.2 Institute refusing to implement the Pension Scheme to the applicant's case;
- ac. Hold and declare that the letter dated 01.07.2016 issued by the Ministry of Health & Family Welfare to Respondent No.2 Institute is not binding on the Respondent No.2.
- b. Hold and declare that the employees of the said Institute are entitled to the benefits of the Pension Scheme in accordance with the Bye Law 28 thereof;
- c. Direct the Respondent no.2 to immediately implement the Pension Scheme in the said Institute and extend all consequential benefits arising therefrom to the applicants;
- d. Direct the Respondent Nos. 1 and 3 to accord their approval and consent to the Respondent No.2 in implementing the Pension Scheme in said Institute;

e. Allow costs in favour of the Applicants;
and

f. Pass such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the present case.”

3. The relevant facts of the case are that the applicants are the employees of the respondent no.2 – National Institute of Tuberculosis & Respiratory Disease (hereinafter referred to as “the Institute”) which is an autonomous body working under the supervision and administrative control of the respondent no.1, i.e., Ministry of Health & Family Welfare. The said Institute is a society incorporated under the Societies Registration Act, 1860 and is governed by its Bye Laws. They are aggrieved by the impugned order dated 01.07.2016 whereby proposal for grant of GPF/Pension Scheme to the employees of National Institute of Tuberculosis and Respiratory Disease) has not been approved. They have challenged the said order on the ground that it is in contravention to the provisions of Rule 28 of Bye Laws of the Institute, which clearly provides as under:-

“28. Pension & Provident Fund

(a) The employees of the Institute shall be governed by the CCS (Pension) Rules, 1972 and the

GPF (Central Service) Rules, 1960, as amended from time to time.

(b) All the existing employees except those on deputation on foreign service to the Institute who are governed by the CPF Rules shall exercise their option in writing stating specifically whether they would like to:

(i) be continued under the Contributory Provident Fund Scheme or

(ii) be governed under the CCS (Pension) Rules, 1972 and GPF(CS) Rules, 1960.

Such option shall be unconditional, unambiguous and irrevocable. In case, where they exercise the option to be governed by the pension scheme, the total amount credited to their provident fund as employers' contribution and outstanding on the date of exercising their option shall be credited to the Pension Fund Account of the Institute. Such option shall be exercised within a period of three months from the date of commencement of these rules. Provided that the Director may for reasons to be recorded in writing extend this period in any appropriate case. Where, however no option is exercised by any existing employee within a period of 6 months from the date of commencement of these Rules, such employees shall be deemed to have opted for the Pension Scheme.

(c) The Institute shall constitute a fund known as "Lala Ram Sarup Institute Staff Pension Fund" (hereinafter referred to as 'Pension Fund'). The total amount standing in the credit of existing employees who opt for the pensionary benefits as "Employer's Contribution" together with interest thereon shall be credited to pension fund and for this purpose, the Institute shall open an account with any Nationalized Bank.

(d) The Institute henceforth shall contribute to the pension fund such monthly contribution at such rates as may be approved by the Central Government from time to time. The Institute may also contribute additional money out of its own internal resources to augment the Pension Fund to make it a self-generating unit for the purpose for which it is being created.

(e) In the case of an existing employee, who has opted to be governed by the Pension Scheme, his total qualifying service shall include the service rendered by him in the Institute, the erstwhile Lala Ram Sarup TB Hospital and any regular service rendered by him in the Central and State Government and also any local body or any other Institution controlled by the Central or any State Government.”

They have pleaded that aforesaid Bye-laws of the Institute mandate the applicability of a Pension Scheme in terms of the CCS (Pension) Rules, 1972 on its employees and it has been laid down categorically that an option would be given to the employees whether they wish to continue with the Contributory Provident Fund Scheme or switch over to the old Pension Scheme. It is also provided that in case, no such option is exercised by the employees within six months from the commencement of the said Rules, such employees shall be deemed to have switched over to the Pension scheme. They have alleged that the said Institute did not give any such option as obligated in Rule 28(b) of the Bye Laws to its employees. Thus automatically the present Pension Scheme became applicable on all these employees of the Institute. They have also conveyed their consent for the applicability of Pension Scheme on them as against the Contributory Provident Fund but the respondent No.2

Institute failed to implement the Pension Scheme to its employees. They have also pleaded that the respondent no.1, i.e., Ministry of Health & Family Welfare has implemented the Pension Scheme in terms of the CCS(Pension) Rules, 1972 in several autonomous institutions which are under its control and supervisions like NIB, CCRAS, CCRH, CCRUM etc. In support of their contentions, they have relied upon the decision of the Hon'ble Supreme Court in the case of **Lieutenant Governor of Delhi & Ors. Vs. VK Sodhi & Ors.**

4. The respondents have drawn our attention to Para 2 of their CA in which they have been able to show that they have forwarded the proposal for grant of GPF/Pension Scheme to the employees of the Institute who joined the Institute before 2004, but the same has not been approved by the respondent no.1 since it is not feasible to implement the GPF/old Pension Scheme at this late stage.

5. We are also convinced with the contentions of the respondents made in their CA that the benefit of old Pension Scheme is applicable to Central Government employees, including civilian Government servants in the Defence Services, appointed substantively to civil services

and posts in connection with the affairs of the Union which are borne on pensionable establishment and governed under the CCS(Pension) Rules, 1972. They have further drawn our attention to the provisions of Rule 2(d) which clearly provides that these rules shall not apply to persons entitled to the benefit of a Contributory Provident Fund. Hence, the applicants of the NITRD, who were appointed before 01.01.2004 and are covered under the Contributory Provident Fund since the inception of the Institute are not entitled to the benefit of old Pension Scheme under CCS(Pension) Rules, 1972. Accordingly, the recommendations of the Central Pay Commission are not directly applicable in respect of employees of autonomous bodies. Similarly, the recommendations of the 4th Pay Commission were not directly applicable to employees of the autonomous bodies.

6. We have also gone through the judgment sought to be relied upon by the applicant in the case of **Lieutenant Governor of Delhi & Ors.** (supra) and find that the only issue raised therein was whether the SCRET, the organization concerned, came within the ambit of State. Whereas, in this case, the respondents have not disputed the above issue at all. They have only contended that the applicants of this OA are seeking implementation of

GPF/old Pension Scheme as per their resolution. Hence, this case is totally different on facts of the aforesaid judgment sought to be relied upon by the applicants.

7. A perusal of the impugned order dated 01.07.2016 passed by the Ministry of Health and Family Welfare clearly reveals that the Department of Expenditure vide its DO letter No.25(1)/EV/2000 dated 16.03.2000 apprised all the Ministries/Departments the reasons for not approving the proposal for introduction of Pension Scheme in Autonomous Bodies. It is further clarified that substantial improvements were made in the Pension Scheme and due to the practical difficulties involved in retrieval of records and adjustments to be made, demand for further option was not recommended by the 5th CPC and there is no proposal with the Government to consider any further change in options. The proposal forwarded by the Institute could not be accepted at this late stage. Hence, in view of the fact that once the respondents have not approved the proposal for grant of GPF/Pension Scheme, it is not within the domain of this Tribunal to direct the respondents to implement the GPF/old Pension Scheme in the Autonomous Body, like NITRD. It is well settled in the case of **Malikarjuna Rao Vs. State of Andhra Pradesh**, 1990(1) SCALE 705 that the power

under Article 309 of the Constitution of India to frame rules is legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Court or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309. The applicants are not being deprived of pensionary benefits. The respondents are giving the benefit of CPF to the applicants, which is also a different kind of pension scheme. Hence we do not find any merit in the claim of the applicants that they be covered under CCS (Pension) Rules, 1972 and the GPF (Central Service) Rules, 1960.

8. In view of the totality of facts and rules with regard to the granting of CPF pensionary benefits, the OA is bereft of merits and is dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

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