

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

O.A. No.3972 of 2018

Orders reserved on : 09.07.2019

Orders pronounced on : 12.07.2019

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

K.D.S. Yadav, Aged 64 years,
S/o Late Sh. Kuber Singh Yadav,
Retired as PGT (Hindi) from KVS
R/o Vill. & PO Akbarpur, Distt. Ghazipur (UP).

....Applicant

(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Kendariya Vidyalaya Sangathan,
Through the Commissioner,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi.
2. The Additional Commissioner
Kendariya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-110016.

.....Respondents

(By Advocate : Ms. Rashmi Bansal)

O R D E R

Heard learned counsel for the parties.

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

“(i) That the Hon'ble Tribunal may further graciously be please to pass an order of quashing the impugned orders dated 1.5.2018 only to the extent of charging interest on the refund of management share of CPF amount from the applicant, declaring to the effect that the same is illegal and arbitrary

and consequently pass an order directing the respondents to refund the interest amount i.e. Rs.3,28,191/- to the applicant with interest at an early date.

- (ii) Alternatively, in case of not granting the prayer relief (i), the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondent to grant the interest on the delayed payment @ 18 PA from the date of retirement till the date of payment of pension at an early date.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the of litigation.”

3. Brief factual matrix of the case are that the applicant was appointed as PGT(Hindi) on 23.2.1996 on direct recruitment basis and has been retired from the same post on 31.3.2013. Although after 1.1.1986, the CPF Scheme was not in operation as only GPF Scheme was in operation but the respondents illegally continued the applicant in CPF Scheme. Being aggrieved by the aforesaid act of the respondents, the applicant earlier moved OA 787/2018 before this Tribunal and this Tribunal vide Order dated 19.2.2018 disposed of the same with the following directions:-

“2. At the very outset, learned counsel for the applicant, Shri Yogesh Sharma states that he would be satisfied at this point of time, if 2 OA-787/2018 respondents are directed to consider the case of the applicant in the light of the judgments passed by this Tribunal in OA-3112/2013 - **Hoshiar Singh Vs. UOI & Ors.** and OA-4592/2015 along with connected OAs. – **Vijay Kumar Malik Vs. UOI & Ors.**

3. In view of the limited prayer made by the learned counsel for the applicant, without going into merits of this case, the OA is disposed of with the direction to the respondents to examine the case of the applicant in the

light of above cited judgments. If the applicant's case is found to be similar to the aforementioned judgments, the respondents may extend same benefits as were granted to the applicants therein. The respondents shall decide the case of the applicant within a period of 3 months from the date of receipt of a certified copy of this order by way of a reasoned and speaking order. No costs."

3.1 In compliance of the aforesaid directions of this Tribunal, the respondent – KVS passed order dated 1.5.2018 and acceded to the request of the applicant for conversion from CPF to GPF-cum-Pension Scheme from 2.3.1996 on receipt of Management Share of CPF with upto date interest from Regional Office, Varanasi. Thereafter the KVS directed the applicant to deposit an amount of Rs.9,55,291/- which also included interest amount of Rs.3,28,191/-. Although according to the applicant, he objected to the amount of interest but the respondents told him that they will not further process the pension case of the applicant till the payment of interest and, therefore, he has no option except to deposit the entire amount of Rs.9,55,291/-, receipt of which is evident from the KVS HQ letter dated 20.6.2018. Aggrieved by the aforesaid action of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

4. When this matter is taken up for consideration, learned counsel for the applicant submitted that applicant's main prayer is that the impugned order dated 1.5.2018 be quashed only to the extent of charging interest on the refund of management share of CPF amount from the applicant, as the

same is illegally and arbitrary and consequently, respondents be directed to refund the said amount of interest to the applicant with interest at an early date or in the alternative, if this Tribunal is not inclined to grant the main relief, the applicant sought that direction be issued to the respondents to grant the interest on the delayed payment @ 18 PA from the date of retirement till the date of payment of pension at an early date on the ground of equity.

4.1 In support of his aforesaid claims, the applicant's counsel submitted that respondents have corrected their mistake and in such eventuality, the applicant should not be penalized for the mistake committed by the department and therefore, there is no question of charging any interest from the applicant, as it is settled legal position that one cannot take the benefit of his own wrong. He further submitted that once the respondents charged the interest on their management share of CPF, the respondents are also liable to pay interest on the pension of the applicant from the due date. He further submitted that in the case of **S.K. Dua vs. State of Haryana and others**, reported in 2008 (3) SCC 44.

5. On the other hand, counsel for the respondents by referring to the counter affidavit submitted that applicant that throughout his service he was in CPF Scheme and he was aware about that he is a member of CPF Scheme and not the GPF-cum-pension scheme by knowing the fact that

Management is depositing its share to the employer CPF account, which corroborated that he has exercised his option to continue with CPF Scheme with complete awareness and knowledge and the same remain unabated by the applicant for long time approximate about 22 years. Counsel further submitted that applicant superannuated from service on 31.3.2013 and he has received full and final payment of CPF alongwith interest on his superannuation without any objection or protest. However, applicant has raised objection for the first time by filing aforesaid OA in 2018, i.e., after 5 years of his superannuation. However, in compliance of the directions of this Tribunal dated 19.2.2018 in the said OA, the respondents considered the case of the applicant and acceded to his request for conversion from CPF to GPF-cum-Pension Scheme vide order dated 1.5.2018 with the condition to refund the contribution of Management share in CPF Scheme received by him at the time of his retirement with interest thereupon from the date of retirement to the date of actual remittance of Management Share into Management Account. Further the applicant on his retirement is entitled only for the refund of amount contributed by him in CPF Account only with amount of interest accrued till the payment date and also monthly pension. Applicant being member of CPF on his retirement has received his contribution as well as management contribution along with upto date accrued

interest. Therefore, the Management asked him to remit the management share with accrued interest for conversion from CPF to GPF cum Pension Scheme. Upon depositing the Management share of CPF Scheme along with accrued interest on 7.6.2018 for conversion, the respondents recasted his GPF account and allowed the interest thereupon and issued an order to release the GPF account along with accrued interest till the date. It is also submitted by the counsel that pension order had also been issued to the applicant. Since the conversion from CPF to GPF-cum-Pension Scheme was done only on 1.5.2018 on his request, the applicant is not entitled for any interest on pension amount.

5.1 Counsel also submitted that the decision of the Apex Court in **S.K. Dua** (supra) relied upon by the applicant is distinguishable on facts as in that case retiral dues were withheld due to pendency of disciplinary proceedings, which were later on dropped finally, which is not the case in hand.

6. Having regard to the submissions of learned counsel for the parties and pleadings on record, this Tribunal observes that it is an admitted fact that the applicant has chosen to file OA in 2018, i.e., after 5 years of his retirement for conversion of his case from CPF to GPF-cum-Pension Scheme and in compliance of directions of this Tribunal dated 19.2.2018, the respondents accepted to the applicant's request with a

condition that he has to refund the management share towards his CPF contribution, which was received by him upon his retirement in 2013 with interest. Accordingly, the applicant has refunded the said amount with interest to the respondents which led to the respondents to proceed with his case for conversion from CPF to GPF. Accordingly, thereafter the respondents converted his case from CPF to GPF and issued PPO order and disbursed the payment of arrears of pension to the applicant. As upon conversion from CPF to GPF, the applicant is entitled to his own contribution and not the Management share and the management share was released to the applicant in 2013, the respondents have rightly demanded from the applicant to refund the management share with interest admissible on the said amount. Reliance placed by the applicant on the decision of the Hon'ble Apex Court in the case of **S.K. Dua** (supra) is clearly distinguishable on facts as pointed out by the counsel for the respondents.

7. The applicant has filed this OA in 2018, i.e, after five years of his superannuation and since the payment of CPF, he was entitled to, was given to him. He was depositing his share of CPF during his service period and was aware that his employer was also depositing their share as per the CPF Scheme and hence could have raised his grievance earlier.

8. The respondents have complied with the Orders of the Tribunal dated 19.2.2018 and have acceded to his request for conversion from CPF to GPF-cum-Pension Scheme. They have issued order with regard to the same on 1.5.2018, i.e., virtually without any delay after receiving the Order of the Tribunal dated 19.2.2018. Hence, we do not find any merit in the arguments advanced by the applicant that he be given any interest on delayed payment of his pension, as he was not entitled to any pension till the passing of the order dated 19.2.2018 on his request for conversion from CPF to GPF-cum-Pension Scheme. Hence, this Tribunal does not find any merit in this OA and the same is accordingly dismissed. No costs.

**(Nita Chowdhury)
Member (A)**

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