

**Central Administrative Tribunal
Madras Bench**

MA/310/269/2018 & OA 310/379/2017

Dated Thursday the 7th day of June Two Thousand Eighteen

P R E S E N T

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

S. Sakthy

S/o Simon

Res: No. 43, Godavari

DAE Township, Anupuram Post

Kancheepuram – 603 127.

.. Applicant

By Advocate **M/s. T. N. Sugesh**

Vs.

1. The Union of India

Rep. by the Secretary, Department of Atomic Energy

Government of India

Anushakthi Bhavan, CSM Marg

Mumbai – 400 001.

2. The Director

Indira Gandhi Centre for Atomic Research (IGCAR)

Department of Atomic Energy, Kalpakkam,

Kancheepuram 603 102.

3. The Director

Department of Pension and Pensioners Welfare

Ministry of Personnel, PG & Pensions

3rd Floor, Lok Nayak Bhavan

Khan Market, New Delhi 110 003.

4. The Administrative Officer (P)

Indira Gnadhi Centre for Atomic Research (IGCAR)

Department of Atomic Energy, Kalpakkam,

Kancheepuram 603 102.

... Respondents

By Advocate **Mr. M. Kishore Kumar**

ORAL ORDER

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

MA 269/2018 is filed to permit the applicant to file additional documents by way of an additional typed set in the OA. Counsel for respondents has no objection and, therefore, MA is allowed.

2. Heard both sides. The applicant had filed this OA seeking the following relief:

“To call for the records relating to the Impugned Order of the 4th respondent in Ref No. IGCAR/PF/5050/P-II/165 dt. 01.02.2017 and set aside the same in so far as it pertains to rejection of the applicant's claim for switch over CPF to GPF is concerned and direct the respondents to permit the applicant to switch over to the General Provident Scheme (GPF) from the existing Contributory Provident Scheme (CPF) and grant him all consequential benefits”

3. It is submitted that the applicant was appointed in the Technical Stream of IGCAR, i.e. the 4th respondent Institution to the post of Draughtsman 'A' on 12.01.1989 when the CPF scheme was in operation. By OM dated 12.10.1992, the 3rd respondent allowed change over from CPF to GPF in terms of a uniformed policy for Scientific and Technical personnel under which the applicant derived a right to exercise the option of moving over from CPF to GPF within 20 years of qualifying service from the date of entering service. However, the OM was withdrawn by a subsequent OM dt. 23.07.1996 with respect to persons who had joined service before 01.08.1992, thereby depriving the applicant of such option. Thereafter, the Department of Atomic Energy by an OM dated October 12, 2000 decided to extend one more final option to all the Technical Personnel of the

department who had joined prior to 01.08.1992 and had not completed 20 years of service and were still under CPF to move over to the pension scheme as a special case. The option had to be exercised within a period of six months from the date of issue of the OM.

4. The grievance of the applicant is that the OM of the first respondent dated 12.10.2000 was never brought to the notice of the applicant and several other persons in his category as a result of which, they could not exercise the option within the prescribed time limit of six months. Later, when the applicant sought to move over to the pension scheme in terms of the aforesaid OM, the respondents passed the impugned order dated 01.02.2017 stating that there was no provision to consider the applicant's request from change over from CPF to GPF and there was no second option available in this regard. The impugned order, however, also referred to similar representations submitted by CPF holders and informed the applicant that the Department of Atomic Energy had submitted a proposal to the Department of Pension and Pensioners' Welfare on 11.07.2016 recommending favourable consideration of the request of such persons. Further action on the applicant's request would be initiated only after the outcome of the proposal dated 11.07.2016 submitted by the Department was known.

5. Learned counsel for the applicant would draw attention to the recommendations made by the Committee headed by Special Secretary/ Additional Secretary who looked into the issue thoroughly and examined the representations received in the Department from the staff federation and a number of individuals.

The recommendations of the Committee were conveyed to the Department of Pension/Pensionary Welfare for orders by an ID Note dated July 11, 2016. It is pointed out that after examining the representations the committee had clearly concluded that the persons who had not exercised their option were not aware of the OM dated 12.10.2000 for reasons of posting in remote areas or otherwise and therefore their request deserve to be considered sympathetically.

6. However without proper application of mind on the recommendations of the Committee, the 3rd respondent rejected the recommendations by an OM dated 25.01.2017. Aggrieved by such rejection the applicant is before this Tribunal.

7. Learned counsel for the respondents while not disputing the facts, would submit that admittedly the applicant had failed to exercise his option to move over from CPF to GPF within the prescribed time limit of 6 months from the date of receipt of issue of OM dated 12.10.2000. He seeks to rely on the order of this Tribunal in OA No. 212/2008 dated 08.05.2008 (Annexure R11) rejecting the prayer of a similarly situated persons which was upheld by the Hon'ble Madras High Court in WP No. 29371/2008 by an order dated 02.11.2011. The SLP there against filed thereby bringing the issue to finality. Accordingly the applicant would not be allowed to challenge his option.

8. Learned counsel for the applicant would, however, submit that the order of this Tribunal as upheld by the Hon'ble High Court preceded the recommendations of the Committee constituted by the first respondent. The decision of the Courts could not, therefore, be held against persons such as applicants as the High Level

Committee, after examining the representations reached the conclusion that the applicant and similarly placed persons could not exercise the option as they were unaware of the issue of the OM dated 12.10.2000. The rejection of the recommendation of the Committee, made through a non-speaking order, was arbitrary and unsustainable in law, it is contended.

9. Learned counsel for the applicant would also argue that the decision of the respondents was discriminatory in the light of such option allegedly allowed for persons coming under the scientific category without any time restriction and those who moved from technical to scientific stream on promotion within a time limit of 20 years. Such discrimination is not permissible being violative of Article 16 of the Constitution of India. However, admitting that the applicant had come to know of the decision only after the filing of reply by the respondents and that no relief could be granted to the applicant unless the policy decision itself is challenged, the applicant would seek liberty to withdraw this OA and submit a comprehensive fresh OA to agitate all relevant issues both on facts as well as in law.

10. Keeping in view the aforesaid request, the applicant is allowed to withdraw this OA with liberty to file a fresh OA along with all relevant information accompanied by documentary evidence and seeking an appropriate relief. OA is disposed of accordingly.

(R.Ramanujam)
Member(A)
07.06.2018