

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/45/2017

Date of Order: 15.07.2019

Between:

Dr. K. Suman Chandra, PhD
S/o K. Ramulu
Aged about 60 years
Occ: Professor & head (CAS)
National Institute of Rural Development
Rajendra Nagar, Hyderabad – 500 030. Applicant

AND

1. The Union of India, Ministry of Rural Development
Rep by its Secretary, Room No.249, II Floor,
Krishi Bhavan, New Delhi – 110 114.
2. The Under Secretary to Govt. of India
Dept of Pension & Pension Welfare
Lok Nayak Bhavan, Khan Market
New Delhi – 110 003.
3. The Director General
National Institute of Rural Development
Rajendra Nagar, Hyderabad – 500 030. ... Respondents

Counsel for the Applicant ... Mr. K. Sudhakar Reddy

Counsel for the Respondents ...Sh. B.Laxman proxy of Mr. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed challenging the action of the respondents in continuing the applicant in Contributory Provident Fund Scheme (in short 'CPF Scheme') instead of General Provident Fund Scheme (in short, GPF Scheme).
3. Brief facts of the case are that the applicant joined respondents' organization on contract basis as Research Associate on 12.11.1984 and he has opted for CPF Scheme in 1985. Thereafter, applicant was

appointed as direct recruit as Assistant Director in 1992 against a regular post. The appointment letter made it clear that he is entitled for GPF Scheme. Applicant on 08.08.2011 represented to the respondents to bring him under the GPF Scheme by citing the relevant Bye-law, bearing the number 52. Thereafter, applicant was promoted on contract basis as Deputy Director on 10.08.1999. While promoting him to the said post, it was stated in the appointment letter that "considering that he is a regular officer of the institute as Assistant Director, he is permitted to continue to contribute to the GPF during the contract appointment in accordance with the provisions contained in the GPF rules of the Institute". Applicant made several representations bringing it to the notice of the respondents, the rules under which he is eligible for GPF Scheme. There being no favourable response, OA has been filed.

4. The contentions of the applicant are that similarly situated faculty members were extended the benefit of GPF Scheme whereas the applicant was denied. The faculty members, who were recruited after 30.09.1987, are required to be governed by the GPF Scheme since CPF Scheme was no more in force.

5. Respondents, in their reply statement, opposed the contentions of the applicant by claiming that no specific order was issued by the respondents for filing the OA. Applicant voluntarily opted for CPF and made the contributions. The filing of the application is time barred and that the applicant after availing all the benefits under CPF, seeking option for GPF after retirement, is only an afterthought. Respondents rejected the contention of the applicant that he is automatically eligible to be covered under GPF. Further, they pointed out that when the applicant was

appointed as direct recruit as Assistant Director in 1992 against the regular post, he was entitled for GPF, yet he continued to contribute for CPF without raising any objection. Respondents accordingly made their matching contribution to CPF. As the issue was not raised at that instant of time, the matter should be treated as final and applicant under the cover of the representations made from 2011 seeking to exercise GPF option should be rejected. Between 1992 and 2011, 19 years have passed which is too long a time for the applicant to have opted for GPF. It is true that the applicant made a representation on 8.8.2011 requesting to bring him under GPF citing Para 52, Section (4) of Chapter IX of Service Bye-Laws, but the said provision does not apply to the case of the applicant since he opted for CPF. The request of the applicant was also taken up with the concerned Ministry but it was turned down. Even after getting the appointment as Deputy Director, applicant continued under CPF. As Deputy Director, he is eligible to contribute for CPF if he has not opted for GPF. The contention of the applicant that he has been discriminated in contrast to other faculty members is not true. There are certain employees in the respondents organization, who were appointed directly and have opted for GPF, for which they are eligible. Hence, comparing with such employees is incorrect. Though the CPF Scheme was withdrawn in 1989, since the applicant contributed to the said scheme, he was allowed to do so. The relief sought by the applicant is not maintainable under law since he has enjoyed the benefits of CPF by contributing to the Scheme till he retired. Applicant retired on 31.1.2017 and on his retirement, he has been paid eligible amount along with

management contribution of the CPF. Applicant was paid Rs.35,55,789/- vide Cheque No.793440, dated 13.2.2017.

6. Heard both the learned counsel and perused the pleadings on record.

7. (I) Preliminary objection raised by the respondents is that there is no order issued to the applicant to agitate against. This contention does not help the respondents since the applicant has made a representation to bring him under GPF which was negated, therefore, this forms cause of action for this Tribunal to take note and adjudicate upon. Besides, GPF is part of the pensionary benefits and hence, the cause of action is continuous. Therefore, the question of delay and limitation does not arise.

(II) Now, going into the details, applicant joined respondents organization as Research Associate on contract basis and was permitted to contribute to CPF. Later, he was appointed as Assistant Director against the regular post. While working as Assistant Director, he was eligible to contribute to GPF. Applicant represented in 2011 to allow him to contribute to GPF as he is entitled for the same, since Clause 4 of the appointment letter issued to the applicant as Assistant Director, permits such contribution, as under:

“He will be entitled to the benefits of Pension-cum-Gratuity-cum-Family Pension-cum-General Provident Fund under the relevant rules of the Institute.”

Even on being promoted as Deputy Director on contract basis on 10.08.1999, the offer of contract appointment also states as under:

“Considering that he is a regular officer of the Institute as Asstt. Director he is permitted to continue to contribute to the GPF during the contract appointment in accordance with the provisions contained in the GPF rules of the institute.”

The Office Order No.54 (copy of which is at page 11 of the OA) dated 1.5.1985, issued by the respondents in regard to exercise of option for General Provident scheme or to continue to be governed by the existing Contributory Provident Fund Scheme, states as under:

“.....If he does not communicate his option within the time limit specified above, he shall be deemed to be have elected the pension-cum-gratuity-cum-family pension and General Provident scheme.”

(III) Further, Clause 52 of the Bye-Laws of respondents organization dealing with the question on hand, stipulates as under:

“52. Application and eligibility of the schemes:

a) Persons appointed after the date of commencement of the schemes under bye-laws 48 and 49.

1) A person appointed on contract under Service bye-laws 2(2) shall be eligible to be governed only by the Contributory Provident Fund Scheme under Bye-law 50.

2) A person initially appointed on contract under Bye-law 12 to a post referred to in Bye-law 3(a) shall be eligible to be governed by the Contributory Provident Fund Scheme under bye-law 50, for the period he holds the appointment on contract (vide sub-clause 4).

3) A person appointed to a post otherwise than on contract **shall be eligible** to be governed only by the Pension-cum-Gratuity-cum-Family Pension Scheme referred to in bye-law 48 and the General Provident Fund Scheme referred to in bye-law 49.

4) An employee of the category referred to in sub-clause (2) shall, on his appointment on a regular basis in the post held by him or any other post under bye-law 12, have the option to elect either.

i) the Pension-cum-Gratuity-cum-Family Pension Scheme referred to in bye-law 48 and the General Provident Fund Scheme referred to in bye-law 49 or

ii) to continue to be governed by the Contributory Provident Fund Scheme referred to in bye-law 50

Provided that he shall exercise and communicate his option in writing to the Registrar and Accounts Officer within three months of the date of the order appointing him on a regular basis, and if he is on leave on that date within three months from the date of his return from leave, and the option so exercise shall be final.

Provided further that if a person does not communicate his option in the manner aforesaid, he shall be deemed to have elected the Pension-cum-Gratuity-cum-

Family Pension Scheme and the General Provident Fund Scheme.”

Thus, as can be seen the Bye-law, and the appointment order facilitate the applicant to come under the gambit of GPF. Respondents repeatedly stressing that since the applicant opted for CPF and did not switch over to GPF though he was eligible, does not serve their cause, since the Bye law, Office Order and the appointment letters issued enable the applicant to be in GPF, even if he were not to opt for the same.

(IV) The same issue fell for consideration before the Coordinate Bench of this Tribunal in **Shyam Sunder Prasad Sharma v. The Union of India & Others**, in OA No.109/2015 dated 27.08.2018 wherein different provisions of Bye Laws have been discussed and finally it was held as under:

“10. Now it is crucial to refer to the relevant Bye-Laws which are binding on the applicant as well as the Institute. Bye-Law No.47 in Chapter IX shows that 6 of 9 the Institute shall have two schemes, namely (1) Pension-cum-Gratuity-cum-Family Pension Scheme and General Provident Fund Scheme (2) Contributory Provident Fund Scheme. Bye-Law 52 deals with application and eligibility of the scheme, according to which a person appointed on contract under Service ByeLaw 2 (2) shall be eligible to be governed only by the Contributory Provident Fund Scheme under Bye-Law 50, for the period he holds the appointment on contract basis. However clause 4 of Bye-law 52 which is relevant for the purpose of the present case lays down that an employee of the category referred to in sub-clause (2) i.e. holding the post on contract basis under service bye-law 2(2) shall continue to be governed by the Contributory Provident Fund Scheme. When he is appointed to that post or any other post on a regular basis, he shall have the option to elect either (i) the Pension-cum-Gratuity-cum-Family Pension Scheme and the General Provident Fund Scheme referred to in bye-laws 48 and 49 or (ii) to continue to be governed by the Contributory Provident Fund Scheme referred to in bye-law 50. He shall exercise the option within a period of three months. However, as per the provision if a person does not communicate in the manner aforesaid, he shall be deemed to elect Pension-cum-Gratuity-cum-Family Pension and General Provident Fund Scheme.

12. Before parting the order it would be necessary to refer to the judgements relied on by the learned counsel for the applicant : Som Nath & Others Vs. State of Punjab and others in CWP No.1432 of 2012, wherein the Learned Single Judge of Hon'ble High Court of Punjab and Haryana High Court held as follows :

"I have considered the submissions of the counsel for the parties and with their assistance have gone through the records of the case. In the light of the admitted facts that the petitioners were appointed prior to 1.1.2004, although, their services have been regularized after 1.1.2004 and in the light of the Division Bench judgement of this Court in Harbans Lal's case (supra), on going through the same I am of the considered view that the claim of the petitioners is covered in their favour on all fours. The stand as has been projected by the respondents in the written statements filed in the cases, have been duly considered by the Division Bench and rejected. The operative part of the judgement reads as under :

"From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004. In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working

prior to 1.1.2004 but have been regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of receipt of copy of this order."

The Review Petition (C) No.2038 of 2013 in Special Leave Petition (C) No.23578 of 2012 which was filed against the judgement of the Division Bench of High Court of Punjab and Haryana in Harbans Lal's case was dismissed by the Hon'ble Supreme Court. The Hon'ble Supreme Court held as follows :

"We are of the opinion that the High Court has not committed any error which would call for our interference in exercise of our jurisdiction under Article 136 of the Constitution of India. We are of the opinion that no case (case) for review of order dated 30.07.2012 is made out."

The Hon'ble High Court for the State of Telangana (a jurisdictional High Court) in Writ Petition No.44613 of 2018 (**Union of India & Others v. Shyam Sunder Prasad Sharma & Anr.**), vide order dated 12.06.2019, while upholding the aforesaid decision of this Tribunal, observed as under:

"According to the second proviso of Bye-Law 52 (4), in case an option was not exercised by the employee, then he is deemed to have opted for the Pension Scheme. Admittedly, in the present case, the applicant did not submit any option after his services were regularized. Therefore, under the first part of the said proviso, he is deemed to have opted for the Pension Scheme.

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Keeping in mind the mechanism prescribed by Bye-Law 52(4), this Court directs the petitioners to calculate the amount contributed by the employer to the Contributory Provident Fund and the interest thereupon. Once the said amount is duly calculated by the petitioners, the applicant is directed to refund the said amount to the petitioners. Thereafter, the petitioners are directed to calculate the years of service rendered by the applicant, and to calculate the pension payable to the applicant under the Old Pension Scheme. This exercise shall be carried out by the petitioners and by the applicant within a period of three months from the date of receiving the certified copy of this order."

Therefore, the present case is fully covered by the above judgments which have comprehensively dealt with the issue.

(V) The respondents have submitted, the observations of the Hon'ble High Court of Judicature at Hyderabad for the State of the Telangana and the State of Andhra Pradesh, while adjudicating Writ Petition No.13585/2013, dated 16.12.2016, in support of their contention. The decision delivered by the Hon'ble High Court in Writ Petition 44613/2018, dated 12.06.2019, is the latest one and dealt with extensively the issue. Therefore, the later decision holds the field.

(VI) Hence, as can be seen from the observations of the Tribunal and of the Hon'ble High Court of Telengana, the applicant is fully eligible to opt for GPF in the instant case. It was negated though the policy provides for such provision. Hence, the respondents are directed as under:

- (a) to permit the applicant to come under GPF Scheme from the date he is eligible.
- (b) the applicant shall refund the total management contribution towards CPF Scheme from the date he has become eligible to GPF as per the extant rules for GPF Scheme along with interest at prevailing GPF rate.
- (c) Time permitted to implement the order by the respondents is three months from the date of receipt of the management contribution of CPF from the applicant, with GPF rate of interest.
- (d) There shall be no order as to costs

With the above directions, the OA is allowed.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 15th day of July, 2019