

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00371/2018

Reserved on : 20.08.2019

Jodhpur, this the 30th August, 2019

CORAM

**Hon'ble Smt Hina P. Shah, Judicial Member
Hon'ble Ms Archana Nigam, Administrative Member**

Gajendra Singh Rathore, S/o Shri Dhonkal Singh Rathore, aged 59 years, resident of Plot No. 45-A, Ajit Colony, Jodhpur (Raj.)

(Presently posted on the post of TGT P&HE at Kendriya Vidyalaya, BSF, Jodhpur (Raj.).

.....Applicant

By Advocate : Mr Jog Singh Bhati.

Versus

1. Kendriya Vidyalaya Sangathan through the Commissioner, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
2. The Joint Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. The Deputy Commissioner, Kendriya Vidyalaya Sangathan (Regional Office), 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.

.....Respondent

By Advocate : Mr Avinash Acharya.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

“That the applicants most respectfully pray that this Original Application may kindly be allowed with costs and by an appropriate order or direction the respondent authorities may kindly be directed

to consider the case of the applicant under GPF cum pension scheme in terms of Office Memorandum dated 01.05.1987 (Annex. A/1).

Any other order favourable to the applicant may kindly also be passed.”

2. Brief facts of the case for adjudication of controversy involved in the present OA are that the applicant joined the respondent-department, i.e. Kendriya Vidyalaya Sangathan on 01.03.1985 and is presently working on the post of TGT P&HE at Kendriya Vidyalaya, BSF, Jodhpur (Raj.). Applicant is due for retirement w.e.f. 30.09.2019. The pleaded case of the applicant is that at the time of initial appointment of the applicant Contributory Provident Fund (CPF) Scheme was in vogue and therefore, applicant was also covered under the same as was applicable to all the employees of respondent-department. However, vide OM dated 01.05.1987 (Annex. A/1), respondent-department introduced an Scheme for all employees to change over to pension scheme, if desired wherein it has been provided that erstwhile employees could have an option to continue under the CPF Scheme, if desired and the said option had to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the prescribed format given by the respondent-department for continuation under CPF Scheme. If the option for continuation under CPF Scheme could not be exercised by the employee, they would deemed to have been come over to the pension Scheme. The case of the applicant is that he neither exercised such option

nor he conveyed respondent-department to continue under CPF Scheme yet he is being continued under CPF Scheme instead of pension scheme. He sought his option form by the respondents vide RTI application dated 13.07.2016(Annex. A/2) and the same has been replied vide letter dated 01.08.2016 (Annex. A/3) stating therein that applicant is CPF holder, therefore, pension is not payable to him. Aggrieved of the same, applicant served legal notice dated 18.01.2018 (Annex. A/4) through his counsel. Applicant states that respondent-department did not reply to the legal notice nor communicated that his is member of CPG Scheme. Applicant further states that for the first time through reply under RTI dated 01.08.2016, he came to know through his counsel that he is covered under CPF Scheme and he will not be considered for pension scheme, i.e. he is deprived from the benefits of GPF Scheme. He further states that in an identical matter preferred by an employee of respondent-department Shri S.P. Tak before the Hon'ble Tribunal and later before the Hon'ble Rajasthan High Court, Jodhpur by way of D.B.C.W.P. No. 10662/2016 (S.P. Tak Vs CAT & Ors) wherein petitioner was aggrieved of non-consideration of his case under pension scheme despite non-filing of option to continue under CPF Scheme, respondent-department forcibly assumed that petitioner was part of CPF Scheme and was retired without pension. The Hon'ble High Court vide order dated 04.01.2018 held that since petitioner

did not exercise a positive option to remain as a member of CPF Scheme, therefore petitioner shall be deemed to be a member of pension scheme. He further states that this Tribunal in a similar matter, i.e. OA No. 290/00411/17 (Kumudini Pandey Vs KVS & Ors), this Tribunal directed the respondent-department to grant pension to the applicant and allow her to deposit the withdrawn amount received at the time of retirement. Hence, the applicant filed present OA seeking direction to the respondents to consider his case under GPF Scheme in terms of OM dated 01.05.1987 (Annex. A/1).

3. Respondent filed reply on 16.07.2019 and submitted that the present OA has been preferred almost after 30 years as the cause of action, if any, relates back to the year 1988, therefore, OA preferred by the applicant is barred by limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. Further, no miscellaneous application for condonation of delay in availing the legal remedy has been filed. Hence OA preferred by the applicant is liable to be dismissed on this count alone in limine. On merits of the case, respondents averred that in the 51st meeting of Board of governors of KVS held on 31.05.1988, it was approved that KVS will implement the recommendation of the 4th Central Pay Commission for its employees for change over from CPF Scheme to GPF Scheme as per the OM dated 01.05.1987. It

has been stated that the persons joining the KVS on or after 01.01.1986 shall be governed only by General Provident Fund-cum-Pension Scheme (GPF) and will have no option for CPF Scheme. All the CPF beneficiaries who were in service on 01.01.1986, however, had an option to continue under CPF Scheme, if they so desired. The said option was to be exercised and conveyed to the concerned Head of Office/Principal by 31.01.1989 in duplicate if the employee wished to continue under CPF Scheme. If no option was received by the Head of Office/Principal by the above date and further forwarded by them by 28.02.1989, the employee will be deemed to have come over to the pension Scheme. Thus all the employees as on 01.01.1986 who were members of CPF Scheme, were given an opportunity to exercise a fresh option to continue in the CPF Scheme if they so desired, failing which they will be covered under GPF-cum-Pension Scheme. Thereafter, such scheme was stopped by the Ministry of Human Resource Development vide its letter dated 22.02.2006 and it issued instructions not to permit an employee to switch over from CPF Scheme to GPF Scheme. It is clear that the applicant had joined KVS prior to 1986 and as per the secondary records such as pay bills, annual statement of CPF issued and Form 16 issued for filing of Income Tax Return it clearly shows that the applicant was well aware of the fact that the applicant was treated under CPF Scheme. Therefore, the prayer of the applicant for not

treating him under CPF Scheme cannot be acceptable at this point of time. Hence there is no illegality on the part of KVS to continue him under CPF Scheme. The respondent further submitted that the copy of the option exercised by the applicant is not traceable and cannot be produced because of lapse of time of more than 30 years. The respondents in support of its averments relied upon the judgment of KVS & ors. Vs. Jaspal Kaur & Ors in Civil Appeal No.2876 of 2007, wherein the Hon'ble Supreme Court has held that merely because the original documents relating towards the exercise of option was not produced that cannot be a ground for ignorance and there are ample materials to show the exercise of the option. It is clear that there are no materials, in the claim of the applicant for seeking conversion from CPF to Pension Scheme on the ground that the applicant never submitted any option for continuation of CPF Scheme and failure on the part of respondents to trace out such option form and as such the OA is liable to be dismissed. It has been further averred that the applicant on his own violation had opted for CPF Scheme and had taken conscious decision to continue in CPF Scheme. As per the 51st Meeting held on 31st May, 1988, it was decided that KVS will implement mutatis mutandis the decision taken by the Government of India on the recommendation of Fourth Pay Commission for the KVS employees for change over from CPF to Pension Scheme in the manner 9 indicated in OM dated 01.05.1987. It was accordingly

decided vide KVS OM dated 01.09.1988 that persons joining service on or after 01.01.1986 shall be governed by GPF-cum-Pension Scheme. The applicant was very much aware about the fact that he was treated under purview of CPF Scheme since the other ample material such as Form No.16, pay bills and annual statements clearly shows that regular deduction towards contribution to CPF Scheme was made from time to time. It is only after knowing the fact that some employees have been granted benefit, the applicant has also preferred this present application at such a belated stage. The judgments relied upon by the applicant is of no help to the applicant under the present facts and circumstances of the case. The facts of each case have to be examined before passing any order. Thus, respondents prayed that OA may be dismissed.

4. Heard learned counsels for the parties and perused the record.

5. At the outset, Mr Jog Singh, learned counsel for the applicant submitted that the facts of present case are squarely covered by the case of Smt. Kumudini Pandey Vs Kendriya Vidyalaya Sangathan & Ors (OA No. 411/2017) wherein by order dated 11.10.2018, this Tribunal after hearing the respondents and considering all the judgments cited by them, held that in absence of specific option exercised by the employee towards CPF Scheme, the employee was deemed to have been come over to

GPF Scheme and the action of the respondents treating the applicant governed by CPF Scheme after 01.09.1988 in absence of any option form submitted by her was declared illegal. Accordingly, respondents were directed to convert the applicant as pensioner under GPF Scheme in pursuance to the para 3 of OM dated 01.09.1988, and pay the revised pension including the arrears for which she became eligible by such conversion. In the present case, the only difference is that the applicant has not yet superannuated and he is going to retire w.e.f. 30.09.2019. He thus prayed that similar relief may be granted to the applicant herein also.

6. On the other hand, Mr Avinash Acharya, learned counsel for the respondents submitted that effect and operation of order dated 11.10.2018 passed by this Tribunal in the case of Smt. Kumudini Pandey (supra) has been stayed by the Hon'ble Rajasthan High Court vide its order dated 12.04.2019 passed in D.B.C.W.P. No. 2815/2019 filed by the respondent-department. He further stated that though option form of the applicant is not traceable but he exercised his option to remain under CPF Scheme which can be seen from the documents that deductions towards contribution of CPF with Management Contributions have been made through Pay Bill and annual statements have also been issued to the applicant each year. Moreover, in the year 1997, applicant vide annexed document dated 01.07.1997 (page54)

changed his nominations under CPF Scheme, therefore, the applicant was well aware that he is governed by CPF Scheme and he did not chose to represent against the same if he had not exercised any option.

7. We have considered the arguments advanced by counsels for the parties and perused the record.

8. We find that the applicant, however, claimed that his case is squarely covered by the judgment of this Tribunal passed in Kumudini Pandey's case, effect and operation of which has already been stayed by the Hon'ble Rajasthan High Court, but on perusal of record, it appears that the applicant would have exercised a positive option towards CPF Scheme as he changed his nominations in the year 1997 when he nominated his wife and son for distributing and crediting the amount of CPF at the time of his death cancelling earlier nomination made in favour of his father. Hence, it can safely be said that the applicant was well aware in the year 1997 that he is governed by CPF Scheme whereas Office Memorandum for change over from CPF to Pension Scheme was issued on 1st May, 1987 (Annex. A/1). The applicant has filed present OA on 11.12.2018 stating in para 4(i) that he came to know for the first time through his counsel that he is governed under CPF Scheme in the year 2018 and not under Pension Scheme. The said averment made by the applicant is contrary to the document placed on record by the respondents,

i.e. applicant's nomination form dated 01.07.1997, therefore, contention of the applicant that he was not aware that he is governed under CPF Scheme cannot be accepted. Hence, applicant's case is not covered by the judgment rendered by this Tribunal in Smt. Kumudini Pandey's case.

9. Accordingly, since applicant was aware of the fact that he is being governed by the CPF Scheme, therefore, on the basis of non-production of document relating to option of applicant by the respondents cannot be a ground to ignore the other documents placed on record by the respondents that applicant had actually exercised his option in favour of CPF Scheme and deductions towards CPF contribution with management contributions were being made regularly after issuance of OM dated 01.05.1987 since last 30 years.

10. In view of discussions hereinabove made, we see no reasons to issue any directions to the respondents. Hence, OA is dismissed with no order as to costs.

**[Archana Nigam]
Administrative Member**

**[Hina P. Shah]
Judicial Member**

Ss/-