

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00816/15**

Date of Order: 28/05/2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Dr. Abu Sufian, Son of Late Ruhul Qudus, Resident of Village- Shuja-alpur, PO-Shankarpur, District- Munger (Bihar), Ex- Vice Principal, Kendriya Vidyalaya, Danapur Cantt., District- Patna (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of Human Resources Development, Government of India, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi- 110016.
3. The Joint Commissioner (Finance), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi- 110016.
4. The Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Patna- 800020 (Bihar).
5. The Finance Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi- 110016.

.... **Respondents.**

By Advocate: - Mr. H.P. Singh, Sr. SC

**O R D E R
[ORAL]**

Per Dinesh Sharma, A.M:- The OA is against the order dated 22.09.2015 issued by the Finance Officer, Kendriya Vidyalaya Sangathan (KVS) by which the claim of the applicant for grant of pension under GPF Rules, instead of treating him under CPF Rule, has been rejected. According to the applicant this order is against the judgment and order delivered by

CAT, Ernakulam in OA 457 of 2011 which was upheld by Hon'ble Kerala High Court. He has also alleged that in several other cases including cases filed before CAT, Principal Bench, New Delhi, this matter has been decided favourably and therefore his request for grant of pension under the GPF Rules, instead of treating him under CPF Rules, should be granted.

2. The respondents have denied the claim of the applicant. They have alleged that applicant was appointed as PRT in the year 1974 and was a CPF optee. He superannuated on 31.07.2011 and got all his benefits under the CPF scheme. The respondents have also cited a number of decisions by this Tribunal and of the Hon'ble High Court and Hon'ble Supreme Court in which the reliefs, as sought by the applicant in this case, have been denied (judgment of Hon'ble Supreme Court in Jaspal Kaur's case relied by this Tribunal in Dinesh Prasad Singh's case- judgments annexed at Annexure R/2 and R/3)

3. The applicant filed a rejoinder in which he has again quoted the judgment of the Ernakulam Bench of CAT which has been upheld by Kerala High Court. Since the subsequent judgments have not made any mention of the judgment of the Kerala High Court, the subsequent judgment is not binding in the light of the decision of the Hon'ble Supreme Court in the case of G.L. Batra reported in 2013 (4) PLJR SC 404 (para-13 & 15). It is also mentioned that the applicant has never opted for CPF contribution. Hence, respondents must prove their contention about this by producing option exercised by the applicant.

4. The respondents have filed a supplementary written statement in which they have annexed another decision by Patna High Court in the case of Vir Man Prasad Singh & Ors. (CWJC No. 4576/2018 decided on 05.04.2018).

5. We have gone through the pleadings and heard the learned counsels of both the parties. While the applicants have been banking on the judgment of CAT, Ernakulam which was upheld by Hon'ble High Court of Kerala, the respondents have produced a number of later judgments according to which the reliefs sought by the applicant cannot be granted. We have gone through these judgments. In the case cited by the applicant (the judgment by Ernakulam Bench in OA 457/2011 which has been relied upon in some later judgments of this Tribunal) the Tribunal had come to the conclusion that the respondents had applied the CPF scheme to the applicant (in that case) "by mistake". The recent judgment quoted by the respondents (judgment by Hon'ble Patna High Court), however, in the case involving facts exactly similar to the case before us has observed as follows:-

"16.....this Court can safely infer that no employee will continue to make contribution to CPF Scheme for more than three decades without any murmur or protest and if at all any kind of representation came to be filed, it was only done in the 21st century sometime in the year 2012.

17. Such kind of wagering is not permissible before a Court of law. The Court will stand for enforcement of legal right of a citizen and not for derivative kind of interpretation which may be given under the scheme whatever be their conduct."

6. It is argued by the learned counsel for the applicant that any subsequent decision of a Hon'ble High Court which does not mention an earlier decision (which it has apparently overridden) will not be considered as relevant when following the principle of "stare decisis". We cannot blindly follow this argument in the light of the aforementioned dictum of the Hon'ble Patna High Court and also a decision of this bench of the Tribunal in OA 573/2013, where in a matter exactly similar to the present case, the Tribunal refused to grant the prayer being barred by period of limitation. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member