

(2021) 10 CAT CK 0014

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00973 Of 2018

Deep Chand Kushwaha

APPELLANT

Vs

Commissioner Kendriya Vidyalaya Sangathan 18 Institutional
Area, Saheed Jeet Singh Marg, New Delhi 110016 & Others

RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Citation : (2021) 10 CAT CK 0014

Hon'ble Judges : Vijay Lakshmi, Member J; Tarun Shridhar, Member (A)

Bench : Division Bench

Advocate : Ashish Srivastava, N.P Singh

Final Decision : Dismissed

Judgement

Tarun Shridhar, Member (A)

1. The applicant in this OA seeks a direction to the respondents for conversion from the Contributory Provident Fund (C.P.F) to General Provident Fund (G.P.F) cum pension scheme by considering him as a direct appointee and not as a promotee. For the sake of clarity, the relief portion of the OA filed by him is reproduced below:-

"(i) This this Hon'ble Central Administrative Tribunal may graciously pleased to respondents for conversion of his case from CPF to GPF cum pension Scheme being direct appointee instead of promotion by setting aside impugned order dated 4/5.7.2018 (Annexure No.11).

(ii) That this Hon'ble Central Administrative Tribunal may graciously pleased to issue any order or direction, rule which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iii) That the cost of application be awarded in favour of the applicant".

2. Brief facts of the case are that the applicant joined the service of Kendriya Vidyalaya Sangathan as an Upper Division Clerk on 23.3.1988. He was confirmed

to this post on 1.4.1988. Thereafter on his being successful in the recruitment examination of Head Clerk, he was appointed as Head Clerk on 08.05.1989 and on completion of probation period got confirmed to this position on 08.05.1991. The applicant retired from service on attaining the age of superannuation on 30.11.2017.

3. On 26.07.2016, Kendriya Vidyalaya Sangathan issued a Circular directing to verify such staff as was recruited between 01.01.1986 to 31.12.2003 for the purpose of conversion from C.P.F to G.P.F. The applicant also submitted his request for such a conversion, which was sent to concerned Regional Office duly recommended by the Principal, Kendriya Vidyalaya Sangathan, Bamrauli. When no action was taken on this representation, the applicant filed an Original Application No. 389/2018, which was disposed of on 23.04.2018 with a direction to the respondents to decide the claim of the applicant. The respondents considered the claim pursuant to these directions vide a detailed speaking order and rejected the claim of the applicant on the ground that he did not fall in the category of employees directly recruited between 01.01.1986 to 31.12.2003. This rejection has been challenged in the present O.A. wherein the applicant seeks the direction to respondents to give him the benefit of coverage under GPF cum Pension Scheme.

4. Learned counsel for the applicant contends that the claim of the applicant has been rejected on a singular ground that he has not joined the post of Head Clerk as a direct recruit but was offered this post on promotion. The learned counsel finds support to his claim in the Apex Court order passed in Civil Appeal No. 2723 of 2005 wherein a similarly situated employee of the Bureau of Indian Standards who were covered under the C.P.F. were allowed to convert to G.P.F. cum Pension Scheme. He further places on record an order passed by the Principal Bench of this Tribunal in OA No. 1865 of 2015. Two employees of Kendriya Vidyalaya Sangathan were allowed to shift from C.P.F. to G.P.F. scheme. The learned counsel would further point out that the applicant had never exercised the option to retain the coverage under C.P.F scheme. Hence, he has a legitimate claim for conversion to G.P.F. In addition to the above quoted pronouncements, the learned counsel has also placed on record orders of different Courts/Benches of Tribunal wherein identically situated applicants were given the benefit of moving from the C.P.F. to G.P.F. scheme. Learned counsel for the applicant also draws strength from the Department of Pension and Pensioner's Welfare office memorandum No. 4/1/87-PIC dated 1.5.1987 wherein conditions have been set for such a conversion.

4. Learned counsel for the respondents points out that the applicant throughout his career never approached the respondents with his grievance or claim and it was only a month prior to his retirement, precisely on 23.10.2017 that he preferred a representation to this effect for the first time. According to him, it is a belated stage to make such a claim. He goes on to add that now that it has been more than three years since the applicant has retired, his case cannot be

reopened. The learned counsel further adds that the Department of Pension and Pensioner's Welfare instructions referred to by the learned counsel for the applicant do not get automatically applicable to the respondents as Kendriya Vidyalaya Sangathan is an autonomous body. It was in the year 1988 that a decision was taken by K.V.S Board that persons joining on direct recruitment after 1.1.1986 shall be governed by G.P.F. cum Pension Scheme. In the instant case, the applicant had already joined service prior to this date and his subsequent appointments are only by virtue of promotion, therefore, he cannot be considered to be a direct recruit. The learned counsel further argues that all through his career, the candidate was aware through his monthly salary slips, annual statements, form 16 for income tax return, C.P.F statement etc. that he is a part of C.P.F. scheme and this continued till one month prior to his retirement. It is an indication that he was consciously choosing to remain a part of the C.P.F scheme. The learned counsel draws attention to a similar matter decided by Principal Bench in OA No. 942 of 2016 wherein the applicant had continued in the C.P.F. scheme for nearly 27 years and hence held that the matter stood settled and could not be opened again.

5. We have heard learned counsel for the parties and are of the view that the applicant has chosen too late a stage in his career to prefer his claim of conversion from C.P.F. to G.P.F. scheme. At this stage, we would not like to enter into the controversy whether applicant's appointment as a Head Clerk in the year 1989 is to be deemed to be a direct recruitment or on promotion because the fact of the matter, which is not in dispute is that the applicant had initially joined service in Kendriya Vidyalaya Sangathan on 23.03.1983, a date much earlier than the cutoff date of 1.1.1986 for conversion. This date is relevant as employees recruited only after this date were covered under G.P.F The option asked for by the respondents in the year 2016 which the applicant exercised and was sent to the concerned Regional Officer in the recommendation would carry weight only if the applicant was to be accepted as a direct recruit of the period from 1.1.1986 to 31.12.2003, which is not the case here. Moreover, the pertinent fact is that the applicant never agitated this matter throughout the course of his service, despite being abundantly aware that he was not a part of G.P.F. scheme. We are inclined to accept the argument put forth by the learned counsel for the respondents that it can be reasonably construed that the applicant was a willing participant in the C.P.F. scheme. We are of the view that since the applicant has also retired, it is too late in the day for us to issue any further direction in the matter as an earlier direction has already been issued in OA NO. 389 of 2018, which was disposed of by a well reasoned and speaking order.

6. In the light of these discussions, no relief can be extended in this OA, which is accordingly dismissed. No order as to costs.