

(2023) 12 CAT CK 0001

In the Central Administrative Tribunal

Case No : Original Application No. 1607 Of 2020

Gurvinder Kaur Sandhu

APPELLANT

Vs

Commissioner Kendriya Vidyalaya Sangathan 18, Institutional
Area, Shaheed Jeet Singh Marg, New Delhi - 110016 & Ors

RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:

Limitation Act, 1908 — Section 32
Limitation Act, 1963 — Section 22
Constitution Of India, 1950 — Article 14
Bureau Of Indian Standards (Terms And Condition Of Service Of Employees
Regulation, 1988) — Regulation 16

Citation : (2023) 12 CAT CK 0001

Hon'ble Judges : Dr. Chhabilendra Roul, Member (A)

Bench : Single Bench

Advocate : Santosh Kr. Sahu, U.N Singh

Final Decision : Dismissed

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present Original Application has been filed by the Applicant, seeking the following relief:-

“(i) Hold and declare that the applicant being a direct recruit TGT(Hindi) joining after 01.01.1986, in terms of the judgments delivered by this Hon’ble Tribunal to the similar benefit of Pension under CCS(Pension) Rules, 1972;

(ii) Direct the respondent No.1 to immediately consider the representation / documents pending in KVS Hqrs. And to issue suitable instructions to Respondents No.2 to immediately process the pension papers of the applicant.

(iii) Direct the respondents to ensure that, the Applicant is granted Pension and other retiral benefits as per CCS (Pension) Rules, 1972, with effect from the date of her retirement i.e. 30.11.2020.

(iv) Grant any other relief which the Hon'ble Tribunal may deem appropriate."

2. The brief facts of the case is that the present applicant joined initially on 07.08.1985 as a PRT in Kendriya Vidyalaya, Sangathan(KVS). The applicant opted for CPF Scheme with account No. CPF SC No. MRC- 2486. Later on, he appeared in open competition and got selected as a TGT(Hindi) in KVS. On basis of this open competition, she joined on 16.08.1986 at Kendriya Vidyalaya, Air Force, Station, Ojhar, Nasik, Maharashtra. She also opted for continuation in CPF Scheme and submitted her Option Form on 11.1.1989 in response to KVS notification dated 01.09.1988 seeking option regarding contribution or discontinuation under CPF Scheme. Accordingly, she has been allotted revised CPF Account No. 1373. She continued her CPF Scheme till her retirement i.e. on 30.11.2020.

2.1 Government of India, Department of Pension and Pensions Welfare, vide OM No. 4/1/87.PIC-I dated 01.05.1987 notified the policy regarding the discontinuance of CPF Scheme and change over to Pension Scheme under CCS(Pension) Rules 1972 in respect of serving employees as on 01.01.1986 and those who would be joining after that date. The KVS Authorities, also adopted the Govt. of India Scheme and notified their own policy vide OM dated 01.09.1988. Through the applicant appointed initially in 1985 and subsequently in 1989 gave her option to continue under the CPF Scheme, subsequently she wanted to change from CPF to GPF Scheme and submitted her representation dated 25.9.1996 and 11.11.1998 requesting the Deputy Commissioner of Finance of KVS to allow her to change from CPF to GPF Scheme. However, the respondents did not consider her request and continued to treat her under the CPF Scheme. Being aggrieved, she has filed the present OA seeking the aforementioned relief(s).

3. On admission of the OA notices were issued to the respondents and they have filed their counter affidavit to which the applicant has also filed his rejoinder to the same.

4. The Applicant in her OA and the learned counsel on her behalf during arguments have tendered the following arguments in support of her claim.

4.1 The main ground tendered by the learned counsel for the applicant is that the applicant was selected as a direct recruit TGT (Hindi) after 01.08.1986 and she joined as TGT (Hindi) as such on 16.08.1986. In pursuance with the OM dated 01.09.1988 issued by the KVS, the employees who were on service on or 01.01.1986 or joined service, thereafter would be governed by GPF cum Pension Scheme. In view of this provision, under the said OM dated 01.09.1988, the applicant has automatically come under the GPF-cum- Pension Scheme.

4.2. In support of her arguments, the learned counsel for the applicant has cited the following judgments which have allowed the GPF-cum Pensions Scheme to join the service after 01.01.1986:

(i) Common order dated 25.03.2014 in OA No. 1027 /2014 with OA No. 1039/2014 in the matter of Shri Santosh Kumar Verma vs. KVS and Smt. Usha Rani Singh vs. KVS.

(ii) Order dated 05.04.2017 in OA No. 2774 of 2016 in the matter of Dr. V.P. Garg & Ors. Vs. Kendriya Vidyalaya Sangathan.

(iii) Order dated 19.09.2016 in OA No. 3112/2013 in the matter of Hoshiar Singh vs. Union of India and Ors.

(iv). Common order dated 08.12.2016, in OA No. 1865/2015 and OA No. 1987/2015 in the case of Jaishree Singh Tomar and Shri Dhar Mishra.

(v) Order dated 08.12.2016 in OA No. 2073 /2014 in the matter of B.C. Tyagi vs. Union of India.

(vii) Order dated 06.11.2017 in OA 2931/2016 in the matter of Dr. Nawal Kishore Mishra vs. Union of India and Anr.

4.3. In addition, the learned counsel for the applicant has also cited the judgment dated 25.02.2013 of Hon'ble High Court of Delhi in Writ Petition (C) No. 8489/2011 in A.P. Verma Vs. NCERT and the judgment dated 18.07.2013 of the Hon'ble High Court of Rajasthan in Writ Petition No. 13541/2010 in the matter of Dr. Harish Chand Jain vs. Central Administrative Tribunal. The judgment dated 17.10.2014 of the Hon'ble Apex Court in Civil Appeal No. 9849 of 2014 in the matter of State of Uttar Pradesh Ors. vs. Arvind Kumar Srivastava and Ors.(2015) 1 SCC 347; whereas the Hon'ble Apex Court has held as under:

" 22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be treated similarly. Therefore, the situated persons did not approach the Court earlier; they are not to be treated differently."

4.4. The learned counsel for the applicant further avers that as the KVS has implemented the judgment of this Tribunal in OA No.2774 /2016 in Dr. V.P.Garg & Ors Vs. Kendriya Vidyalaya Sangathan (Supra) case, in analogy of the judgment of the Apex Court in State of Uttar Pradesh and ors. Vs. Arvind Kumar Srivastava (supra) case, the applicant is entitled to get the benefit of migrating from CPF to GPF Pension Scheme. He further cited that the judgment dated 06.12.2021 of the Apex Court passed in Special Leave Appeal(C) No. 18372/2021 in KVS&Anr. Vs. Usha Rajgopalan; the judgments dated 13.04.2023 in the case of Ms. Anita Patanjali & Amita Goyal in OA No. 300/2020. He further cites the judgment dated 26.04.2023 passed by the Jaipur Bench of this Tribunal in OA No.153/2019 alongwith other connected OAs in Mrs. Gurmail Kuar vs. The Commissioner of

KVS. In all these cases, the applicants were similarly placed persons as the present applicant and they have been given the benefits of migrating from CPF to GPF/Old-cum-pension Scheme.

4.5. The learned counsel for the applicant further substantiates the claim of the applicant by citing the following judgments in detail:

i) The Supreme Court of India in *Union of India and Anothers Versus S.L. Verma*, 2006 12 SCC 53 dated 28.11.2006 held:

The Central Government, in our opinion, proceeded on a basic mis- conception. By reason of the said Office Memorandum dated 1.5. 1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards(Terms and Condition of Service of Employees Regulation, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme.

ii) In the case of *Sh. V.D. Pandey Vs Commissioner, KVS and Anr* in OA no.1999 of 2014 dated 4.4.2019, (upheld by Delhi High Court in WP(C) N0. 10527/2019 dated 27.9.2019 and by the Supreme Court in Review Petition No. 602 of 2020, dated 12.2.2020) this Tribunal held:

7. From this, it becomes clear that if an employee does not gives option within five months from the date of issue of the order i.e. 31.05.1988, he shall be covered by GPF cum-pension scheme. The applicant asserts that he did not opt to remain under CPF scheme and accordingly, he comes under GPF-cum-pension scheme. The OA No.1999/2014 respondents are not able to place before us, any letter of option addressed by the applicant, choosing to remain under CPF

scheme. The record discloses that at least from the year 2010 onwards, the applicant has been informing the respondents that he was wrongly being shown as the optee of CPF scheme and the same may be corrected. However, there was no reaction to this. We are not satisfied with the view taken by the respondents and the impugned order is incorrect and contrary to the scheme

iii) Hon'ble Madras High Court in WP (C) No. 19215 of 2015 Titled K. Subramanian Vs The Commissioner, KVS and ors decided on 24.2.2017 also held similar view. It held:

"13. From the above, it could be seen that even the employees who have originally opted to remain in CPF Scheme and switched over to Pension Scheme because the same was being more beneficial to them, the Court has held that non-grant of better benefits by way of pension and denying the same to one set of employees per se discriminatory notwithstanding the option exercised by the employees to remain in CPF scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. The Delhi High Court has adverted to several decisions of the Hon'ble Supreme Court and other High Courts and passed a detailed judgment in a batch of appeals.

The issues raised before the Delhi High Court were identical and the Court has answered the issues in favour of the employees."

In this case, the petitioners gave option to remain in CPF during the extended period of time given to the employees. However, initially, when KVS Authorities solicited their option, they had given option to remain in CPF. The Court held that "the said option given during the time of extended period has no sanctity in law." It was held that in absence of specific option exercised by the employees towards CPF Scheme, the employee deemed to have come over to GPF-cum-Pension Scheme.

In the said judgment of the Madras High Court has distinguished the judgment by the Apex Court in KVS Vs. Jaspal Kaur and other in the following manner:

"10. As regards the contention of Shri M.Vaidyanathan, learned counsel appearing for KVS, that the petitioner did not pursue the matter till date of his retirement and therefore, he is estopped from switching over from one Scheme to the other. Even in the absence of any proof in support of the option in favour of CPF Scheme, but the very conduct of the petitioner should be construed against him and he cannot be allowed to convert his option to GPF Scheme. In support of his contention, he cited a decision of the Hon'ble Supreme Court reported in 2007 STPL (Service) 82 SC "(KVS versus Jaspal Kaur and others)". However, in that case, it was factually demonstrated that the employee therein had opted to the CPF Scheme and therefore, the judgment of the Hon'ble Supreme Court was rendered in that context. As regard the case on hand is concerned, it is not unequivocally demonstrated by the Management of KVS that indeed an option was exercised by the petitioner in favour of CPF Scheme. On the other hand, several representations were addressed by the petitioner to the

Government authority, seeking for conversion from CPF Scheme to GPF Scheme, though the petitioner was not legally required to make such representations because of deeming clause.”

iv) Hon’ble High Court of Rajasthan at Jodhpur in WP (C) No. 5976 of 2017 titled S. P. Tak vs the Central Administrative Tribunal & Ors decided on 4.1.2018 has also reiterated the deemed migration principle in the following manner:

“17. Since there is no clarity whether the petitioners post retirement were tendered and under compulsion they took the amount lying to their credit in the CPF account, we direct that employees contribution with accrued interest thereon and as credited on yearly basis would be refunded by the petitioners to Kendriya Vidyalaya Sangathan if they have received the same. We are not directing any interest to be paid for the reason, we are not directing any interest to be paid on the pension which has accrued to the petitioners.”

v) The Central Administrative Tribunal (PB) in OA No. 1999 of 2014 decided on 4.4.2019 in the matter of Shri V.D. Pandey Versus. Commissioner, KVS and another ruled that if an employee had not given option to continue in the CPF Scheme, he was deemed to have come over in the GPF-cum Pension Scheme. This decision was upheld by the Delhi High Court as well as the Supreme Court. The Tribunal’s directions in the aforesaid OA are as under:-

“8. Therefore, we allow the OA, directing the respondents to treat the applicant as covered by GPF cum pension scheme. The contribution to CPF deducted from the applicant from time to time shall be paid to him, duly re-working his pay structure, referable to GPF-cum- pension scheme. This exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. We also direct that the adjustment shall also take place vis-a-vis the amounts, if any, paid to the applicant, subsequent retirement.

There shall be no order as to costs.”

vi) The counsel for the applicant cited the Apex Court’s decision dated 10.5.2022 in University of Delhi vs. Shashi Kiran and others in which a bunch of Civil Applications against the order dt. 24.8.2016 of the Delhi High Court was challenged by the Delhi University. This judgment of the Apex court has upheld the decision of the Delhi High Court in allowing the migration of employees from CPF to GPF-cum-Pension Scheme under the similar circumstances. Further, this judgment has considered all other judgments of the High Courts and conclusively allowed different categories of employees (Those who opted the migration during extended period, those who could not opt even during the extended period and those who were deemed to have migrated to pension Scheme) the benefit of migrating to the GPF-cum-Pension Scheme. The basis of all these judgments is derived from the Apex Court’s judgment in Union of India and another vs. S.L. Verma and others in Civil Appeal No. 2723 of 2005, decided on 28.11.2006. Here, the Apex Court has delineated the true meaning and intent of OM dt. 1.5.1987 issued by the Department of Personnel and Training. It was held that

the employee who did not give any option were deemed to come over from CPF to GPF-cum-Pension Scheme. The said OA has only left one positive option of continuing in the CPF Scheme. In absence of specific positive option, an employee is deemed to come over to the GPF-cum Pension Scheme. The relevant portion of the judgment in University of Delhi vs. Shashi Kiran reads as follows:-

"25. Considering the circumstances on record, in our view, the decision rendered by the Division Bench of the High Court in Shashi Kiran batch of cases does not call for any interference except to the extent of direction for recouping of the contribution under CPF with 8% simple interest per annum. It is possible that at this length of time, some of the employees in Shashi Kiran batch of cases may not be interested in switchover to GPF. But an option must be afforded to them in such manner as the authorities deem appropriate."

vii) The High Court of Jharkhand in WP(s) 6050 of 2019 decided on 14.09.2022 (titled Union of India &Ors vs Priyabrat Singh) has also upheld the deemed migration principle in the following manner:-

14. This Court is having two views of the Hon'ble Apex Court; one in the case of KVS and Others v. Jaspal Kaur and Others (Supra) and another in the case of University of Delhi v. Shashi Kiran and Others (Supra).

15. The position of law is well settled that if there are two conflicting views of the Hon'ble Apex Court, the latest judgment is to be considered having the binding precedence, as has been held in Subhash Chandra and Another v. Delhi Subordinate Services Selection Board and Others [(2009) 15 SCC 458]. For ready reference, the relevant paragraph of the aforesaid judgment is quoted hereunder:-

¶96. A decision, as is well known, is an authority for what it decides and not what can logically be deduced therefrom. In S.Pushpa [(2005) 3 SCC 1] , decisions of the Constitution Benches of this Court in Milind [(2001) 1 SCC 4] had not been taken into consideration. Although Chinnaiah [(2005) 1 SCC 394] was decided later on, we are bound by the same. It is now a well-settled principle of law that a Division Bench, in case of conflict between a decision of a Division Bench of two Judges and a decision of a larger Bench and in particular Constitution Bench, would be bound by the latter.

16. This Court, taking into consideration the aforesaid position of law that the latest judgment of the Hon'ble Apex Court is required to be followed, therefore, is of the considered view that the view as has been taken by the Hon'ble Apex Court in University of Delhi v. Shashi Kiran and Others (Supra) is required to be followed herein also.

viii) The Supreme Court of India in Union of India & Anrs. vs Tarsem Singh (CA no. 5151- 15152 of 2008 decided on. 13.8.2008) has held that inordinate delay in pension matters also makes a petition liable for dismissal on grounds of delay and laches. However, the consequential benefits could be limited to a period of

three years.

4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan* - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

In *M. R. Gupta vs. Union of India* [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held :

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred....."

In Shiv Dass vs. Union of India - 2007 (9) SCC 274, this Court held:

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

4.5. The learned counsel for the applicant rests his argument by stating that despite the positive option given by the applicant to remain under CPF Scheme in

pursuance to KVS Authorities OM dated 18.09.1988, the option was non est in the eyes of law. The applicant was supposed to be compulsorily included under GPF-cum-Pension Scheme as she joined as a direct recruit as TGT (Hindi) on 16.8.1986, after 1.1.1986, when all fresh recruitees were supposed to be only under GPF-cum-Pension Scheme.

5. Per contra, the learned counsel for the respondents relies upon the counter affidavit filed by the respondents in the present case. He stated that the cases cited by the learned counsel for the applicants are having facts and circumstances which are quite distinguishable from the present case. In the instant case, the applicant had opted positively to remain in the CPF Scheme even after her direct appointment on 16.08.1986. In view of the positive option exercised by the applicant, she is not entitled to switch over to from CPF to GPF / old Pension Scheme. Once the applicant has exercised the option to remain under CPF Scheme in a positive manner, the respondents have acted upon the same and they have contributed their share to the CPF account of the applicant. They have furnished the statements regarding such contribution and deductions to the CPF account every month in the salary statement and the annual statement of CPF as well as the Form-16 issued to the applicant. Since 1986, the applicant has not agitated to challenge the decision of retaining her in the CPF Scheme. Hence, the present OA is not sustainable on the grounds of delay and laches.

5.1 The learned counsel for the respondents further states that the applicant has alleged that the KVS has made mistake in retaining her in the CPF Scheme. Due to the prevailing financial incentives that were available under the CPF Scheme at that time, she knowingly opted for the said Scheme. Subsequently, repeated representations to change the option from CPF to GPF /Old Pension Scheme would not take away the period of limitation in such matters. There is delay of nearly 40 years in the instant case. The applicant also accepted the retirement benefits under the CPF Scheme. In the Nakara's case (D.S. Nakara v. Union of India (1983) 1 SCC 305), the Apex Court has held that the conduct of the petitioner will decide the issue of regarding giving benefit on the similar conditions even if earlier such benefits were given to other petitioners. In the instant case, the applicant gave positive option which is as follows:-

"No. 110125/340/2018/KVS/CPFto GPF/3388

Dated: 20.08.2018

The Dy. Commissioner

Kendriya Vidyalaya Sangathan,

Regional Office,

Chandigarh.

Subject :

Conversion from CPF to GPF in respect of Smt. Gurvinder Kaur Sandhu, TGT (Hindi) Kendriya Vidyalaya No. 1 Amritsar

Sir/Madam,

With reference to the above mentioned subject and Letter dated 14.06.2018 of Smt. Gurvinder Kaur Sandhu, it is informed to you that Ministry of Human Resource Development in their letter dated 08. 12.2016 have clarified that only those employees of KVS who were appointed during the period between 01.01.1986 to 31.12.2003 through the direct recruitment are alone eligible for conversion from CPF to GPF and only such cases are under consideration of KVS Hqrs.

Accordingly, in view of the above clarification, the following documents duly verified and attestation, with recommendation may be forwarded to this office by 24.08.2019 of the concerned employee.

1.

Copy of the Appointment Letter of initially joining in KVS on direct recruitment.

2

Copy of the appointment Letter between the period 01.01.1986 to 31.12.2003 by direct recruitment.

3

Copy of the Option Form of CPF.

4

The Photostat and attested copies of the relevant pages in the Service Book where entries relating to the above have been made.

Yours faithfully,

Sd/-

(Manoj Ravatani)

Finance Officer"

5.2 The counsel for respondents cited the following judgments in support of his arguments.

(i) KVS and others vs. Jaspal Kaur in CA No. 2876 of 2007 in which it has held that on account of applicants inability of KVS to produce original option, secondary evidence considered and it was found sufficient to show that the respondent (Jaspal Kaur)(supra) had preferred to remain CCF. The respondent's belated request for inviting over to GPF Scheme was rightly rejected by the KVS.

(ii) The counsel for the respondents further cited the order of the CAT (PB) dt.

7.9.2019 in OA No. 1069/2018 where again reliance in KVS vs. Jaspal Kaur case has been placed and secondary evidence in the form of monthly pay bill, Form-16 for Income Tax, and annual of statement CCF account was found sufficient to prove that the applicants in that case have opted to remain in the CCF Scheme.

(iii) Similarly, the counsel for the respondents relied on CAT order dated 18.8.2021 in Bijay Kumar Jha vs. K.V.S. OA No.2605 of 2021, wherein, again, reliance has been placed on Jaspal Kaur's case and the applicant's prayer for change over to GPF-cum Pension Scheme, after the lapse of 3 decades since the applicant gave specific option for remaining in CCF, was not allowed.

(iv) The counsel for the respondents also cited the order of this Tribunal in OA no. 4244 of 2018 titled Smt Nilima Rakhit and Anr Vs. Union of India & Ors wherein it was held:

11. At the outset, I do record the observation that the applicants have chosen to claim the benefit of GPF and the associated Pension Scheme after a lapse of number of years since their retirement on attaining the age of superannuation. The OA was filed in the year 2018, whereas the applicant nos.1 and 2 had retired on 31.12.2002 and 31.10.2007 respectively. Upon such retirement, they had also obtained all their terminal benefits and since then nothing is said to be due to them 9 O.A. No. 4244/2018 in terms of any of their post retiral entitlements. The omission on their part to agitate this issue after such a long period is surely serving as an impediment in a positive consideration of their claim. The applicants were not ordinary employees, holding a junior level position but are highly educated and worked as Teachers, one of them having retired as a Principal. All these years, they had made a contribution to the CPF. The decision of the Board of Governors being quoted repeatedly by them and their counsel is dated 31.05.1988. If this decision was not implemented qua the applicants, why they chose to remain silent all these years, is not explained. Ignorance or lack of knowledge of such a decision is not established and would also be too far-fetched to accept.

12. I am not in agreement with the argument putforth by the learned counsel for the applicants that the cause of action in the present Original Application is a continuing one or one involving recurring loss. The applicants have obtained all the benefits and entitlements which they were eligible for and what they seek now is another claim and benefit which after a lapse of number of years, they may be finding more beneficial. Even though the learned counsel for the applicants has pointed out that there is no document on record to show 10 O.A. No. 4244/2018 that the applicants had opted for the CPF Scheme, the facts and circumstances as also the background establish that they were aware that all these years they were being covered under the CPF Scheme and continued to remain in such coverage not only till their retirement but even for a number of years after their retirement. There is no cause for them now to agitate denial of benefit of GPF-cum-Pension Scheme after having enjoyed the benefits of CPF for

a large number of years and thereafter taken all their retiral benefits.

(v) Similarly, the counsel for the respondents further cited order in OA no. 1816 of 2020 wherein the claim of the applicants to migrate to the GPF-cum-pension scheme has not been accepted due to inordinate delay in submitting the claim. This order echoes the ratio of the order in OA no. 4244 of 2018.

(vi) The counsel for the respondent further drew attention of the Tribunal to judgment in Union of India and anr Vs. M.K. Sarkar (2010) 2 SCC 59 decided 8.12.2009 wherein it was held that when a Scheme stipulates that benefits there under available only to those who exercise the option within the stipulated time period, option should obviously be exercised within that period. If no such option is exercised within the stipulated period, there would be no recurring or continuing cause of action. Hence, the claim of petitioners were declined on account of delays and laches.

(vii) The counsel for the respondents cited judgment of the Delhi High Court in K.V.S. Vs. Manju Sehgal in WP(C) No. 7712 of 2020 decided 12.3. 2021 wherein it was held:-

13. The present case is squarely covered by the judgment of the Hon'ble Supreme Court in Jaspal Kaur case (supra), which was in the context of KVS teachers like the Respondents herein. In the said case also, KVS could not produce the original option form exercised by the employee. However, placing reliance on secondary documents, that clearly establish that the employee was aware that deductions towards CPF subscriptions were being made, the Hon'ble Supreme Court held that such secondary documents clearly establish that the employees had exercised option under CPF scheme and accordingly, set aside the judgment of the CAT and the High Court. 2021:DHC:937-DB W.P.(C) Nos.7712/2020 & 9851/2020 Page 9 of 9 Reliance may also be placed on the judgment of the Division Bench of this Hon'ble Court in Delhi Transport Corporation Vs. Madhu Bhushan Anand and other connected petitions, 172 (2010) DLT 668 wherein the Court was seized of the similar issue in the context of employees of DTC who wanted to shift from CPF scheme to the GPF cum pension scheme. In the said case also, the employees made representations for shifting from CPF to GPF cum pension scheme much after they had taken voluntary retirement (VRS) and upon being unsuccessful approached the CAT. Distinguishing the judgment of the Hon'ble Supreme Court in Tarsem Singh case (supra), the Division Bench held that the case of the employees would be barred under the law of limitation as they had received their full dues as per the CPF scheme upon their retirement and if they had any grievance they could have filed legal proceedings within three years of having received their dues. Accordingly, claim of the employees was rejected on the ground of limitation as well as delay and laches. The dicta of the said judgment is squarely applicable in the present case

5.3. The learned counsel for the respondents rests his arguments by stating that

in view of the positive option given by the applicant by her own conduct and acceptance, the applicant cannot take a different turn when the situation turns favourable otherwise. He cited the case of Jaspal Kaur's case in respect of inordinate delay and where no such benefit was given to the petitioner thereof on account of inordinate delay.

6. I have gone through the records of the case thoroughly and heard the arguments by the counsels carefully. It is my considered opinion that the facts and circumstances in the present case is squarely covered by the ratio of the judgment by the Apex Court in the case of K.V.S Versus Jaspal Kaur case (in CA No. 2876 of 2007), which has been relied upon in the CAT (PB) order dt. 7.9.2019 in OA no. 1064/2018 in Daya Kumari and others Versus Union of India and others and CAT (PB) order dt. 18.8.2012 in Bijay Kumar Jha in OA No. 2605 of 2018, OA no. 1816 of 2020. The facts and circumstances in the series of judgments and CAT orders cited by the applicants and their counsel are not exactly the same as in the present case. In University of Delhi Versus Smt. Shashi Kiran & Other case, the University afforded more than 10 opportunities to its employees, each time giving extended period to opt for the GPF cum-Pension Scheme. Some of them opted for CPF in the first instance; but subsequently requested for change over during the extended period. The other category after the expiry of extended period, requested the University Authorities to accede to their request for change over from CPF to GPF-cum-Pension Scheme and where the University Authorities refused to allow such migration. The third categories were the employees who had not given option for GPF-cum-Pension Scheme. The Apex Court agreed with the judgment of the Division Bench in light of Judgment in Union of India and Others Versus S.L. Verma & Others and granted the benefit of deemed migration to those employees who had not given any option. In the Delhi University case, the Apex Court allowed the small number of remainder applicants, whose request for change over from CCF to GPF-cum-Pension Scheme after the extended period for furnishing option, was rejected. Because of the circumstances and facts of the case, the Apex Court allowed the benefit of migration to GPF-cum-pension Scheme.

6.1. In the instant case, the issues raised are significantly different from those issues raised in the judgments and orders of various Courts and the Tribunal Benches of CAT cited by the learned counsel for the applicant. From the pleadings and arguments by both the counsels we can delineate the following issues:

(i) Whether the claim of applicants to migrate from CCF Scheme to GPF-cum-Pension Scheme suffers from delays and latches?

(ii) Whether the applicants are barred by the principle of estoppel to raise the issue of migration from CCF to GPF-cum-Pension Scheme?

6.2. In the present case, the applicant knew from the start of the operation of the OM No. 152-1/79-81/KVS/Budget/Part-ii DT. 1.9.1988 that they were in the

CPF Scheme. It is admitted by the applicant that she opted to remain under the CPF Scheme in pursuance to KVS's OM dated 01.09.1988. All monthly salary bill containing deduction from CPF, Annual Statements of every year regarding consolidated balance in CPF and Form-16 for filing income-Tax point to the fact that they were in CPF Scheme. The applicant in her own volition, enjoyed the accrued benefit of CPF Scheme – may be higher interest rate and others. She woke up, long after the exercise of the option that she wanted to migrate to GPF-Cum-Pension Scheme. What prevented her to do so even after the first month of receipt of her salary bills or after receipt of Annual CPF account just after the OM dt. 01.09.1988 came into operation? The applicant is bound to explain each day's delay in agitating for their claim since 01.09.1988. The applicant has failed to explain such inordinate delay. This is not exactly a case of pension per se. Hence, the ratio of judgment in Tarsem Singh (supra) is not applicable in the instant case. Here, there is no anomaly or irregularity in the computation of pension or pensionary benefits. Here, the issue is whether the benefit of migration to pension scheme could have been granted to the applicants w.e.f. 1.9.1988. Hence, the present case is distinguishable from the Tarsem Singh (supra) case. And for that reason, the present OA suffers from delay and latches.

6.3. The applicant is also debarred from raising the issue of migration to the pension scheme from CPF Scheme on account of her behavior and conduct which attract the principle of estoppel. The applicant has enjoyed the benefit of CPF Scheme since 1.9.1988. The applicant has enjoyed the benefit of retirement benefits in respect of CPF benefits after she superannuated from service. Such benefits included the payment on account of CPF. She has not agitated or protested against the payments with regard to CPF.

6.4. Estoppel means the principle which prevents a person from asserting that is contrary to what is implied by a previous action. A person who has induced another person to alter his position to his advantage cannot turn around and take advantage of such alteration. Principle of estoppel, in the instant case, is squarely applicable. The applicant by the action or inaction has accepted the CPF Scheme w.e.f. 1.9.1988 and hence, she is barred to take a contrary position after 28 years.

6.5 It is my considered view that these judgments and orders quoted by the learned counsel for the applicant are not judgments in rem, establishing vested right and principles applicable to all cases and for all time to come when any claimant agitates for the same.

6.6. In view of the above, I am of the considered opinion that the set of primary evidence conclusively points out that the applicant voluntarily remained in CPF Scheme in respect of the operation of KVS OM dated 1.9.1988. The ratio of judgment in Jaspal Kaur (supra)'s case and the OA No 2605/2018 of CAT(PB) and OA No.1816 of 2020 is squarely applicable in the present case. Hence, the OA is without merit and the same is dismissed. There shall be no order as to costs.