
(2019) 09 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 2674 Of 2018

Radhika Joshi

APPELLANT

Vs

Commissioner

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0031

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : C. Bheemanna, U.N. Singh

Final Decision : Allowed

Judgement

1. The applicant Radhika Joshi joined the respondent organization-Kendriya Vidyalaya Sangathan (KVS) as Primary Teacher on direct recruitment in 1979. Subsequently, she held several positions in the respondent organization and retired from the post of Principal on 31.01.2013. On 30.11.1979, the applicant filled the option form opting for Contributory Provident Fund Scheme (CPF Scheme). Subsequently, GPF-cum-Pension Scheme was introduced in the respondent organization vide OM F.No.152-1/79-80/KVS/Budget/Part-II dated 01.09.1988 by which employees were to give options to continue under the CPF Scheme. If no option was received then they would be deemed to have come over to the GPF-cum-Pension Scheme. The applicant did not give any option under this Office Memorandum dated 01.09.1988 but continued to get deductions under the CPF Scheme. Subsequently she wanted the benefit of the Pension Scheme. When the applicant did not get the benefit of GPF-cum-Pension Scheme, she along with others filed OA No.2763/2016 in which this Tribunal vide order dated 05.04.2017 directed the respondents to consider the case of the applicants in light of certain court orders, and a final decision be taken within ninety days. In compliance of the above order, the respondents rejected the plea of the applicant vide order dated 23.04.2018 (Annexure A-1).

2. This OA has been filed by the applicant stating that the respondents have wrongly not considered her claim for the benefits under GPF-cum-Pension Scheme, which was adopted by the respondent organization vide OM dated 01.09.1988. The applicant has contended that she is entitled to the benefits of the GPF-cum-Pension Scheme since at that point of time the only option to be exercised was to continue under CPF Scheme, which she had not exercised. Therefore, in view of the deeming clause incorporated under clause (3) of the OM dated 01.09.1988, she would be deemed to have come over to the GPF-cum-Pension Scheme.

3. The applicant by filing this OA has sought the following reliefs:-

"(i) Direct the Respondents to submit all the records of the case.

(ii) Hold and declare that in terms of KVS Office Memorandum No.F.No.152-1/79-80/ KVS/ Budget/Part.II dated 1.9.1988 the Applicant is deemed to have come under the General Provident Fund and Pension Scheme of CCS (Pension) Rules, 1972, as applicable to the employees of KVS.

(iii) Consequent to the above, hold and declare that the Applicant is entitled for pension and all other retirement benefits as admissible to the similarly placed teachers/ Principals of KVS under CCS (Pension) Rules, 1972.

(iv) Direct the Respondent to ensure that, the Applicant is granted Pension and other retiral benefits as per CCS (Pension) Rules, 1972, with effect from the date of retirement i.e. 31.01.2013.

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

(vi) Considering the fact that the Respondent through their lethargic and callous approach has forced this litigation and thereby caused avoidable wastage of precious judicial time, impose exemplary cost on the Respondent."

4. The applicant has further stated that she also gave a representation on 14.04.2010 for switching over to the GPF-cum-Pension Scheme (Annexure A-6).

5. The claim of the applicant has been denied by the respondents by stating that at the time of her initial appointment, she opted for CPF Scheme and continued in the said Scheme knowing well that her contributions were being deducted under CPF Scheme through pay bills, annual settlement of CPF and Form-16 issued to her for filing Income Tax Returns. According to them, she is not entitled to switch over to the GPF-cum-Pension Scheme.

6. Heard Sh. C. Bheemanna, learned counsel for the applicant and Sh. U.N. Singh, learned counsel for the respondents.

7. For a clear understanding of the matter, it is essential to see the clauses of OM dated 01.09.1988 by which the respondent organization changed over to the GPF-cum-Pension Scheme. Relevant clauses are extracted as under:-

"2. It has, accordingly, been decided that persons joining service in the

Sangathan on or after 1.1.1986 shall be governed only by the G.P.F.-cum-Pension Scheme and will have no option for C.P.F. Scheme. However, for all CPF beneficiaries, who were in service on 1.1.1986, the decision taken shall be implemented in the manner hereinafter indicated.

3. All C.P.F. beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.

3.2 The employee of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office/Principal by 31.1.1989, in duplicate, in the form enclosed (one form may be sent to this office while the other kept with personal records of the employee concerned) if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office/Principal by the above date and in this office through them by 28-02-1989 the employees will be deemed to have come over to the Pension Scheme. The Head of Office/Principals are to forward in one lot options exercised by employees for retention of CPF Scheme received by them, to reach Sangathan's Office dates by 28-02-1989. Where no option to continue under the CPF Scheme is received by them from any, a nil report be sent by due date viz. 28-02-1989.

3.3 The CPF beneficiaries, who were in service on 1.1.1986 but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Sangathan, the Sangathan contribution (management share) to the contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF account. Such option shall be exercised latest by 31.1.1989.

3.4 In the case of CPF beneficiaries, who were in service on 1.1.1986 but have since retired, and in whose case the CPF account has not already been paid, will be allowed retirement benefits as if they were borne on pensionable establishments unless they specifically opt by 31.1.1989 to have their retirement benefits settled under the CPF Scheme.

3.5 In the case of CPF beneficiaries, who were in service on 1.1.1986, but have since died, either before retirement or after retirement, the case will be settled in accordance with para 3.3 or 3.4 above as the case may be. Options in such cases will be exercised latest by 31.1.1989 by the widow/widower and in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible to family Pension under the family pension Scheme if such scheme were applicable."

8. From perusal of the above clauses, it emerges that employees have exercised an option to continue under the CPF Scheme. In case no option is received by the Head of Office/Principal by the cut-off date, the employees will be deemed to have come over to the GPF-cum-Pension Scheme.

9. The applicant has relied on several rulings both of this Tribunal and of Hon'ble High Courts. In the case of N.Subramanian vs. Kendriya Vidyalaya Sangathan [WP (C) No.19215/2015 decided on 24.02.2017], Hon'ble High Court of Madras held that in the absence of specific option exercised by the employee towards CPF Scheme, the employee was deemed to have come over to GPF-cum-Pension Scheme. This order was upheld by the Hon'ble Apex Court as well in SLP (Civil) Diary No(s). 10965/2018 decided on 18.02.2019.

10. The applicant has also relied upon the decision of this Tribunal in the case of Sh. V.D. Pandey vs. KVS & Anr. [OA No.1999/2014], wherein it has been held that when no option is exercised, the deeming clause will enable the employee to be treated as covered under the GPF-cum-Pension Scheme. The present case is squarely covered by this order.

11. The respondents have also relied on several rulings. They have cited the case of KVS & Others vs. Jaspal Kaur & Another [2007(6) SCC 13] wherein the Hon'ble Apex Court held that there was sufficient material to show that the respondent no.1 had preferred to remain under CPF Scheme and a new CPF number had also been allotted. This fact along with other facts like entries in the service book etc. was also held to be sufficient evidence to conclude that she opted for the CPF Scheme and switch over to the GPF-cum-Pension Scheme was not allowed. However, the facts of the present case are different from that of Jaspal Kaur's case (supra) as the respondents have not even contended that the applicant had given any fresh option for continuing under the CPF Scheme nor was any separate CPF number allotted.

12. Similarly, the decision of this Tribunal in the case of Ms. Madhu Gautam vs. KVS & Ors. [OA No.571/2010 decided on 20.01.2011] has been cited by the respondents wherein the applicant had opted for the CPF Scheme. This order can also be distinguished since in the present OA no option was given when the GPF-cum-Pension Scheme was introduced in the respondent organization.

13. The respondents have also cited the decision of the Hon'ble High Court of Delhi in the case of Delhi Transport Corporation vs. Madhu Bhushan Anand etc. [WP (C) No.14027/2009 etc. decided by a common order dated 10.08.2010]. This matter pertains to VRS Scheme in the DTC whereas the present case is the one pertaining to superannuation. Therefore, this ruling also does not apply in this particular case.

14. From the above, I am of the view that this OA is squarely covered by the decision of this Tribunal in Sh. V.D. Pandey vs. KVS & Anr. (supra) and, therefore, the instant OA is allowed. The respondents are directed to treat the applicant as covered under the GPF-cum-Pension Scheme. The exact quantum of dues paid shall be refunded by the applicant as per relevant clause contained in OM dated 01.09.1988. This exercise shall be completed by the respondents within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.