(2019) 08 CAT CK 0023

In the Central Administrative Tribunal

Case No : Original Application No. 973 Of 2018

Ram Prit Thakur APPELLANT

Vs

Kendriya Vidyalaya Sangathan And Ors RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Citation : (2019) 08 CAT CK 0023

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : K.M. Singh, S. Rajappa

Final Decision : Dismissed

Judgement

1. By filing this OA, the applicant is seeking the following reliefs:

"i. Call for the original file(s)/record(s) of the respondents dealing with the case of the applicant and peruse the same;

ii. To direct the respondents to allow the applicant to be governed by GPF-cum-Pension Scheme from the date of his retirement and fix his pensionary benefits and release the same with all consequential benefits;

iii. To declare the action of respondents in not treating the applicant under deemed category for the purpose of GPF-cum-Pension Scheme as illegal and arbitrary and direct the respondents to treat the applicant under GPF-cum-Pension Scheme from the date of his retirement i.e. 28.02.2015;

iv. To declare the action of the respondents in governing the applicant under CPF Scheme on the basis of invalid option, as illegal, arbitrary and discriminatory;

v. To award cost upon the respondents in favour of the applicant;

vi. To grant any other benefits as deemed fit by their lordshops of this Hon"ble Tribunal."

2. When this case is taken up for consideration, counsel for the applicant submitted that this case is squarely covered by the decisions of this Tribunal in OA No.1999/2014 dated

4. 4.2019, OA No.1248/2017 dated 20.5.2019 and OA No.1686/2019 dated 23.7.2019 wherein it is specifically observed that such of the employees who did not exercise any option at all, are brought under the GPF Scheme and it is only when a specific option is exercised that they would be continued in CPF.

3. On a query raised to the learned counsel that the said decisions are not helpful in the case of the applicant in view of the fact that applicant himself in his prayer clause iv. of para 8 of the OA has stated that he had submitted his option but the same was invalid option, he submitted that the same was erroneously and wrongly made in the prayer clause.

4. It is further observed that the provision contained in Department of Pension & Pensioners Welfare Office Memorandum No.4/1/87-PIC dated 01/05/1987 are applicable only to Civilian Central Government Employees who are subscribing to the CPF under Contributory Provident Fund Rules (India) 1962. The employees of statutory/autonomous bodies are not automatically covered by this OM. KVS is an autonomous body and in the 51st Meeting of BOG, KVS held on 31st May, 1988, it was decided that KVS will implement mutatis mutandis the decision taken by the GOI on the recommendations of Fourth Pay Commission for the KVS employees for change over from CPF to Pension Scheme in the manner indicated in OM No.4/1/87-PIC-I dated 1.5.1987. It was accordingly decided vide KVS OM No.152-1/179-80/KVS/Budget/Part.II dated 1.9.1988 that persons joining service on or after 1.1.1986 shall be governed by GPF-cum-Pension Scheme and will have no option for CPF Scheme. The employees who would like to continue in CPF Scheme were however required to exercise a clear option to continue in CPF. On account of implementation of IV Pay Commission"s recommendation - GOI issued orders that those who are joining the Govt. services or or after 1.1.1986 will be covered under the GPF cum Pension Scheme. KVS adopted the same and issued OM No.152-1/79-80/KVS Budget. P.II dated 1.9.1988. Vide this OM dated 1.9.1988, the respondent - KVS sought option from their employees. The applicant has not stated in the OA when he had exercised such option for remaining in CPF Scheme but he only stated that the option exercised was invalid without giving any cogent reasons for declaring the same as invalid. Applicant has only annexed the copies of his representations dated 25.1.1991, 29.2.1998, 19.8.2006, 26.11.2010, 3.4.2014 and 16.8.2017 ventilating his grievance but there is no proof on record which proves that the said representations were actually submitted by the applicant to the respondents" department. In the absence of any such proof, this Tribunal is not in a position to comment on the same.

5. From the bare facts of this case as noted above, it is apparent that applicant had actually exercised his option for remaining in CPF Scheme. However, his only contention is that the said option was invalid but how the same was invalid has

not been clearly substantiated by the counsel for the applicant. Once it is an admitted position that applicant had exercised his option way back when the said Scheme came into existence, subsequently he cannot be permitted to say that the said option exercised by him was invalid despite the fact that applicant stood retired in 28.2.2015 and all the retiral dues might have been released to him on the basis of the CPF Scheme opted by him.

6. For the sake of arguments, if it is presumed that the applicant has submitted his application for conversion from CPF to GPF cum pension scheme in 1991 (copy of which is at page 24 of the paper book). However, in the said application, the applicant has himself stated that he did not exercise that option within the stipulated date and as such his case was deemed to have switched over from CPF to GPF cum pension Scheme. Meaning thereby that he has exercised such option but he has not stated when he had exercised such option and how the said option became invalid. In the absence of such a vital fact, this Tribunal is not inclined to accept the same. It is pertinent to mention that Hon"ble Supreme Court in the case of K.V.S. and others vs. Jaspal Kaur and others in Civil Appeal No.2876/2007 decided on 6.6.2007 has observed as follows:-

"4. Learned counsel for the appellants submitted that the reference has been made to various documents which prima facie show that the option has been exercised. On the contrary, the learned counsel for the respondents submitted that the original documents show exercise of option were not produced. Merely because some other pieces of evidence were produced, they were not sufficient to show that option had been exercised.

5. In this context it is to be noted that the Tribunal itself noted that in the Pass Book name of applicant appears at no. 1889 and the signatures of the Principal of KVS is indicated. It indicates her appointment in KVS from July 1978 to May 1992 in Delhi, from May 1992 to April 2002 Baddowal, from April 2003 to April 2004 at Halwara and thereafter again at KVS Baddowal. It shows her account no. 1889. A copy of the Income tax return having deductions from pay and allowance for depositing in the CPF confirm this fact. The secondary pieces of evidence which go to show that deductions were being made at regular basis from pay and allowance. This according to CAT was not sufficient to show that she had exercised her option.

6. It is to be noted that in the allotment of revised CPF number in the letter of KVS no. 16-2/CO/89-90/CPF/KVS/PF dated 6.3389, name of respondent no.1 appears at serial no.8 and the revised CPG no. is shown as 1889 in place of the earlier CPG no. CEC 2685. This change has not been denied by respondent no. 1. Additionally, again in letter no. KVS no. 16-2/CO/89-90/CPF/KVS/PF dated 6.7.1989 the name of respondent no.1 appears at serial no. 8 and again existing CPF No. CEC 2685 has been indicated. This letter is significant because there is a note in the service book of the concerned employee in respect of allotted CPC A/C under intimation to them. KVS letter no. F-2/C.O/89-90/CPF/KVS/PF dated 15.7.89 with reference to the earlier letter of 6.7.89 intimated the employees

about the change. Again in this letter the name of respondent no. 1 appears at serail no. 8 Most vital document in this controversy is respondent no.1's letter dated 15th March, 1997. In this she has categorically stated that she was contributing towards CPF and her account no. is JRC 1889. This was addressed to the Accounts Officer. This document clearly establishes that respondent no.1 was aware of the change in account number and she herself referred to account number. Her feigned ignorance about the change is absolutely hollow because she herself knows about the changed number.

7. The last pay certificate issued to the respondent no.1 when she handed over charge on 23.5.1992 clearly indicate that CPF subscriptions of Rs. 130/- was being deducted and that she had opted for the pay of CPF Scheme and rate of subscription is Rs. 130/- for month and allotment of CPF account number 1889 was being transferred. On the face of these documents the CAT and the High Court should not have held that option was not exercised by the repondent no. 1. Pursuant to this Court's order the original service book of respondent no.1 was produced. Even on 10.6.2005 in the last pay certificate it has been stated that she had opted for the CPF Scheme. Similar is the position in the last pay certificate dated n19.4.2003 and the last pay certificate of 18.1.1982. All these documents establish that respondent no. 1 had exercised the option for the CPF Scheme. Merely because the original documents relating to exercise to option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. The CAT and the High Court were not justified in talking a difference view."

7. It is to be noted that in this case also the applicant has not disputed the fact that he had exercised his option for remaining in CPF Scheme but his only contention was that the said option was invalid as he did not exercise the said option within the stipulated date as stated by him in his representation dated 25.1.1991. Along with this OA, the applicant has attached copies of three representations said to have been given by him through the Principal, K.V.I.O.C., Barauni. In the said representations which are stated to be of 25. 1.1991 and 29.2.1998, we do not find any receiving of the same from the Office of the Principal, K.V.I.O.C., Barauni. Third representation, which is directly addressed to the Commissioner, KVS, New Delhi and is stated to be of 19. 8.2006 is also stated to be routed through proper channel and again has no receiving from any office. This is a very unique case in which although representations are stated to have been given on 25.1.1991, 29.2.1998 and 19.8.2006, i.e., after a gap of about seven years in each case but there is no receiving from/by anyone who is termed as "proper channel".

It is strange that a person posted at K.V.I.O.C., Barauni, during this entire period of time could not even get the representations said to have been made by him through proper channels, received from the office of the Principal and nor did he pursue with the school authorities to get the matter even referred to the relevant authorities. Hence, even the veracity of his claim that he gave any representation for conversion of his case from CPF Scheme to GPF-cum-Pension Scheme is not borne out on facts. In fact, we also noticed that in his relief and prayer clause of the OA, the applicant has sought the following declaration:-

"vi. To declare the action of the respondents in governing the applicant under CPF Scheme on the basis of invalid option, as illegal, arbitrary and discriminatory;"

Hence, this appears to be a clear case in which after giving his option for continuing under the CPF Scheme, the applicant had a change of mind after his retirement on 28.2.2015 and now wishes to avail the benefit of GPF Scheme. Hence, this OA is squarely covered by the decision of the Hon"ble Supreme Court in K.V.S. and others vs. Jaspal Kaur and others (supra).

8. In the result, and for the foregoing reasons, this Tribunal does not find any merit in the claim of the applicant and hence, the present OA is dismissed as being devoid of merit. There shall be no order as to costs.

