(2019) 09 CAT CK 0066

In the Central Administrative Tribunal

Case No : Original Application No. 972 Of Miscellaneous Application No. 3154 Of 2019

Saroj Sharma — APPELLANT

Vs

Union Of India And Ors — RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0066

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

Bench : Single Bench

Advocate : Suresh Sharma, S. Rajappa

Final Decision : Allowed/Disposed Of

Judgement

1. This Original Application (OA) has been filed by the applicant seeking the following reliefs:-

"(i) To declare the action of the respondents in rejecting the request of the applicant for conversion from CPF to GPF in terms of the Office Memorandum No.4/1/87-PIC-I dated 01.05.1987 issued by Department of Pension and Pensioners' Welfare, vide the impugned letter No.110125/2016/KVS/CPF to GPF dated 02.12.2016 as the arbitrary, discriminatory and illegal.

(b) To direct the Respondents to allow conversion of the applicant from CPF to GPF with effect from 01.01.1986 for all purposes, in a time bound manner as the applicant is due to retire on superannuation on 31st March,2 017.

(c) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

(d) To allow the OA with exemplary cost."

2. The applicant in this OA is aggrieved by the impugned letter No.110125/2016/KVS/CPF to GPF dated 02.12.2016 of the respondents whereby they have rejected her request for conversion from CPF to GPF in terms of the Office

Memorandum No.4/1/87-PIC-I dated 01.05.1987 issued by them respondent no.2, viz. Department of Pension and Pensioners' Welfare for implementing recommendations of the Fourth Pay Commission. The applicant has submitted that per the aforesaid OM, which was adopted by the respondents 3 and 4 in KVS in pursuance of the decision taken in the 51st meeting of their Board of Governors held on 31.05.1988, all CPF beneficiaries in service on 01.01.1986 and who are still in service on the date of issue of these orders should be deemed to have come over to the Pension Scheme on that date unless they specially opt out to continue under the CPF Scheme. The applicant has further alleged that the respondents had never asked for option from anyone as is evident from the action of the respondents to continue the employees under CPF scheme who joined their services on or after 01.01.1986, which is a clear violation of the instructions of the aforesaid OM. The applicant has submitted that the employees, who were aggrieved by the inaction of the respondents, had filed an OA No. 2073/2014 before the Tribunal and the Tribunal vide its order dated 08.11.2016, directed that "the applicant is held entitled to be governed by GPF-cum-Pension Scheme with effect from his joining the independent substantive post of PGT (Geography) with all consequential benefits." The applicant has further pleaded that once the respondents 3 and 4 have decided to mutatis mutandis implement the Government of India OM dated 01.05.1987, all their employees ought to have been deemed to have come over to the Pension Scheme and as such, exercise of any option is not mandatory to come over to the Pension. The applicant has submitted that he had never exercised any option to continue in the CPF Scheme and as such, it could never be available with the respondents 3 and 4. The applicant has thus submitted that the OA deserves to be allowed.

3. The respondents, while denying the submission of the applicant that he had not exercised any option, has filed their reply in which they have submitted that the copy of the option so exercised is not traceable and cannot be produced because oflapse of time of more than 30 years approximately. They have also contended that as per CPF Scheme, regular deduction towards contribution to CPF Management Contribution was made through monthly bills and Annual Statements issued to the applicant in each year. They have further contended that the applicant was also issued Form 16 every year to file Income Tax Return from time to time duly mentioning the CPF deductions made based on which the applicant filed the Income Tax Return from time to time. The respondents have submitted that the case of the applicant is fully covered by the judgment of the Hon'ble Supreme Court in KVS & Ors. Vs. Jaspal Kaur & Anr. (Civil Appeal No.2876 of 2007), as it is evident from the aforesaid documents that the applicant had exercised option for CPF Scheme.

4. After hearing both the parties and perusing the pleadings available on record, it is noticed that the only ground taken by the respondents to oppose the applicant's claim in this OA vide their CA was that copy of the option so exercised by the applicant is not traceable and cannot be produced because of lapse of

approximately 30 years. It is clear from the record that the applicant was appointed as TGT Teacher (Sanskrit) in KVS on 02.04.1983 and the OA was filed by her during her service, as she was due to retire on superannuation on 31.03.2017. Hence, the contention of the respondents that they are unable to find copy of the option exercised by the applicant to continue in CPF Scheme after lapse of 30 years is totally unfounded and baseless. Quite clearly, the applicant has been able to point out that OM dated 01.05.1987 was adopted by the KVS as per the decision taken in the 51st meeting of their Board of Governors held on 31.05.1988 whereby all CPF beneficiaries in service on 01.01.1986 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. Hence, as the applicant was in service at the time of the issue of the aforesaid OM dated 01.05.1987 and had never opted for CPF; her case should have been covered under GPF Pension Scheme. We have also perused the judgment relied upon by the respondents in the case of Jaspal Kaur's (supra) and find that it does not apply to the applicant of this OA as she had not specifically opted for CPF Scheme during her service and made a representation dated 02.12.2016 seeking conversion from CPF to GPF placed at Annexure A-2 of the OA and also approached the Tribunal before her retirement. Hence, in view of the clear distinction of facts, the case of Jaspal Kaur is not at all applicable to the facts of the present case. Hence, in view of the above factual position, we direct the respondents to allow conversion of the applicant from CPF to GPF in terms of the OM No. 4/1/87-PIC-I dated 01.05.1987 within a period of two months from the date of receipt of a copy of this order. We also note that as the applicant herself in this OA has stated thatn she would have retired on attaining the age of superannuation on 31.03.2017, hence, she will be required to first deposit all the amounts paid to her as CPF along with interest at the rate applicable to the GPF deposits and thereafter the respondents shall sanction pension under the GPF rules within three months of completion of all the formalities by the applicant. It is made clear that no interest will be payable if the payment of pension under the GPF Rules starts within the aforesaid period.

5. With the above directions, the OA is allowed. Pending MA No. 3154/2019 also stands disposed of. No order as to costs.