

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 25.02.2013

W.P.(C) 8489/2011

A.P.VERMA

..... Petitioner

versus

**NATIONAL COUNCIL OF EDUCATIONAL RESEARCH &
TRAINING**

..... Respondent

AND

W.P.(C) 8491/2011

A.K.SACHETI

..... Petitioner

versus

**NATIONAL COUNCIL OF EDUCATIONAL RESEARCH &
TRAINING**

..... Respondent

Advocates who appeared in these cases:

For the Petitioners : Mr Manu Mridul with Mr Anant K.Vatsya and Ms Priyanka Singh.

For the Respondent : Mr R.K.Singh with Ms Deepa Rai and Ms Reena Chongtham.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. These two petitions assail the common judgment and order dated 10.11.2010 passed by Central Administrative Tribunal (hereinafter referred to as 'Tribunal') in OA No.1160/2010 and OA No.1168/2010 whereby the Tribunal dismissed the original applications of the petitioners.

2. Since the above petitions raise common issues, this common Judgment shall dispose of the aforesaid petitions filed by the petitioners.

3. For the sake of convenience the facts relevant to the instant adjudication are being extracted from WP(C) No.8489/2011 and are as under:-

(i) The petitioner came to be appointed in the respondent National Council of Educational Research and Training (NCERT) on 08.02.1966.

(ii) By an Office Memorandum No.F.4/1/87-PIC-I dated 01.05.1987 the Central Government on the recommendations of the Fourth Central Pay Commission notified that the Government employees subscribing to the existing Contributory

Provident Fund (CPF) were being given an opportunity to switch over to the Pension/General Provident Fund (GPF) Scheme.

- (iii) The cut-off date for exercising such an option was 30.09.1987. The terms also specified that in case an employee did not give any option he/she would be deemed to have opted for pension scheme. If an employee wanted to continue under the CPF scheme, he/she had to exercise the option for the CPF scheme.
- (iv) The petitioner exercised his option for continuing with the post retirement benefit under the CPF scheme.
- (v) In the year 1993, the respondent invited applications *inter alia* for recruitment to the post of Professor (Vocational Education) in Pandit Sunderlal Sharma Central Institute of Vocational Education (PSSCIVE) at Bhopal.
- (vi) Pursuant to the said advertisement, petitioner along with other internal and external candidates applied for the said posts. The petitioner along with a number of persons from various

organizations and institutions participated in the direct recruitment process and were offered appointment for the said posts in Bhopal.

- (vii) On acceptance of the offer of appointment the petitioner was appointed as Professor (Vocational Education) in the newly accredited institute PSSCIVE at Bhopal on a temporary capacity w.e.f. 21.04.1994.
- (viii) By an order dated 26.04.1994, the NCERT issued a formal order of appointment w.e.f. 21.04.1994.
- (ix) In accordance with the terms and conditions of service, the petitioner along with other appointees, were to be on probation for a period of two years. On 10.04.2001 and 24.08.2001 the petitioner made representations to the respondent for change over from CPF scheme to the pension scheme. However, the said representations were not responded to by the respondent.
- (x) The petitioner retired in the year 2004 on attaining the age of superannuation.

(xi) However, since the respondent considered the petitioner as having been bound by the option exercised by him before his appointment as a Professor in PSSCIVE, Bhopal, the petitioner challenged the action of the respondent.

(xii) In the original application filed before the Tribunal the petitioner stated that it had come to his knowledge that one Ms M.Chandra had joined NCERT, respondent herein, as a Professor of Chemistry in the year 1989 through direct recruitment and had opted for CPF while working in her erstwhile organization. Since, after 01.05.1987 all employees who were appointed afresh were deemed to be covered by the notification dated 01.05.1987, she could not be placed in the CPF scheme. Therefore, Ms Chandra made a representation to the respondent for being granted GPF/Pension scheme. Pursuant to that, after seeking advice from the Ministry of Human Resource Development, the respondent allowed Ms Chandra to switch over from CPF scheme to GPF/Pension scheme.

(xiii) Similarly, the petitioner had urged in his application that one

Ms Pushplata Verma who was governed by CPF scheme while in her erstwhile department and similarly opted for being governed by the CPF scheme, was informed that she would be entitled to get the benefit of pension-cum-gratuity as per the rules of the respondents.

- (xiv) The petitioner's OA No.3530/2010 was disposed of by the Tribunal vide its order dated 25.01.2010 directing the respondent to hear him in the matter and pass appropriate orders.
- (xv) The petitioner duly appeared before the Secretary, NCERT. However, on consideration of the submissions made by the petitioner, the competent authority of the respondent passed an order dated 12.03.2010 by which the plea of the petitioner for giving him benefit of the GPF/Pension scheme was rejected.
- (xvi) Aggrieved by the said order of the competent authority dated 12.03.2010, the petitioner was constrained to file OA No.1160/2010.

(xvii) By the impugned order the Tribunal disposed of the said original application and held that the petitioner's service cannot be treated to have been begun afresh and there being only a technical break in his service, he will not be entitled to exercise the option of switch over at this stage.

(xviii) Aggrieved by the said common judgment and order dated 10.11.2010 the petitioners have preferred the present petitions.

4. The issue involved in the present petitions is within a narrow compass and requires a determination as to whether the petitioners can be given the benefit of being governed by the GPF/Pension scheme in the facts and circumstances of the case.

5. Learned counsel for the petitioners submits that the petitioners were appointed to the posts in PSSCIVE at Bhopal through direct recruitment. It is urged that the said post is a substantive post to be filled through an open selection process inviting internal as well as external candidates and that in accordance with the terms and conditions of the service the petitioners were put on probation for a period of two years. In other words, their appointment should be governed by the rules as prevalent on the date of the appointment.

6. It is next urged by learned counsel for the petitioners that the said Ms Chandra and Ms Pushplata Verma who were also appointed through direct recruitment along with petitioners have been given the benefit of being governed by the GPF/Pension scheme even though they were governed by the CPF scheme prior to their appointments and thus on the basis of parity the petitioners are entitled to the same benefit.

7. Per contra, it is argued on behalf of the respondent that the petitioners had specifically opted to continue under the CPF scheme in accordance with the OM No.F.4/1/87-PIC-I dated 01.05.1987 and that since, thereafter, there has been no enabling office memorandum permitting the petitioners to switch over from the earlier exercised option, the petitioner cannot be permitted to do so.

8. The respondent relies on the decision in Krishna Kumar v. UOI, (1990) 4 SCC 207, to demonstrate that an option once exercised under the above OM, and the dead line for exercising such option having expired, the employee has no right to change from one scheme to other.

9. It is also relevant, at this stage, to consider the findings of the Tribunal which rejected the petitioners' arguments of fresh appointment and observed

that though the petitioners were selected on the basis of direct recruitment yet all the contributions made under the CPF scheme in their past service in the NCERT and future accretions would accrue to the same account. The Tribunal, therefore, found that there was only a technical break in service and as such the petitioners cannot be treated as a new entrant to service. Further, the Tribunal also rejected the argument on parity observing that in the case of Professor M.Chandra, she has joined the service of NCERT on the first time and as such was a fresh appointee.

10. In the present case, it is observed that the said Ms M.Chandra had opted for the CPF scheme in her erstwhile organization as well as in 1991 when she was absorbed in the services of the respondent NCERT. This is evident from the document appended at page 188 of the present petition. In this regard the respondent after obtaining the approval of the Ministry of Human Resource Development vide letter No.F.1-47/2006-Sch.4 dated 09.04.2007 on the representation of the said Ms. Chandra permitted her to exercise the option to switch over from CPF to GPF/Pension scheme on two earlier occasions. It is also observed that in the case of the said Ms Pushplata Verma, the incumbent was also governed by the CPF scheme while in her erstwhile department and had been permitted by the appointment letter

issued to her to get the benefit of pension-cum-gratuity as per the rules of the Council.

11. In the present case, it is observed that in the backdrop of the aforesaid facts, deeming the petitioners be governed by CPF scheme even when it was not in vogue and presuming service conditions of their last service to be applicable upon them, has resulted in a wholly anomalous situation.

12. In view of the fact that the respondent NCERT has permitted similarly placed appointees to switch over to the GPF scheme after being selected through the same recruitment process, a legitimate expectation is raised in favour of the petitioners to be treated in a similar manner. The expectation is further accentuated when the said appointees were permitted to derive the benefit of GPF scheme despite having exercised the option of CPF scheme even after they were absorbed in the service of the respondent NCERT.

13. Therefore, when similarly placed employees of the respondent have been extended the benefit, it would be unreasonable and improper to deny to the petitioners the benefit of the GPF/Pension scheme merely because they were earlier engaged in the service of the respondent NCERT. In this behalf we must observe that the petitioners had been put on probation for a period

of two years subsequent upon their appointment to the relevant post in PSSCIVE, Bhopal. The Tribunal failed to appreciate that it is settled law that once a person is appointed to a substantive post through direct recruitment in an open selection after competing with internal and external candidates the appointment on the said post is a fresh appointment. Therefore, in our opinion, the petitioners have been subjected to hostile discrimination, although they were appointed by the same recruitment procedure as others, only because they were working with one of the establishments of the respondent earlier. In our view the same constitutes unequal treatment amongst equals and is violative of Article 14 of the Constitution of India.

14. We, accordingly, allow the writ petitions and set aside the order of the Tribunal. Consequently, the respondents are directed to extend all the benefits of the GPF/Pension Scheme after making necessary deductions to both the petitioners. No costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

FEBRUARY 25, 2013/mk