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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6322/2011

% ***Judgment Dated: 2nd September, 2016***

T.S.R. PRASADA RAO Petitioner
Through: Mr.Sushil Salwan and Mr.Apoorv
Rastogi, Advocates.
versus

COUNCIL FOR SCIENTIFIC AND Respondent
INDUSTRIAL RESEARCH
Through: Ms.K.Iyer, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 21.04.2011 passed by Central Administrative Tribunal (in short '*the Tribunal*') by which OA No.2158/2010 filed by the petitioner stands dismissed primarily on the ground that the same is barred by delay and laches. The petitioner also seeks to set aside the order dated 25.8.2009 passed by respondent whereby the request of the petitioner with regard to counting of service rendered by him in PSU was rejected. The petitioner also seeks a direction to the respondent to grant pensionary benefits to him by counting the past service rendered by him in the PSU with the services rendered by him with the respondent.
2. With the consent of the counsel for the parties, we set down the writ petition for final hearing and disposal.
3. The necessary facts, which are required to be noticed for the disposal of the present writ petition, are that on 04.07.1967, the petitioner joined the

Planning and Development Division of the Fertilizer Corporation of India Limited (in short *FCI*) at Sindri, Dhanbad, Bihar, as a Research Chemist and was engaged in research and development of catalysts and chemical processes. The petitioner was promoted as an Assistant Technologist. The petitioner rendered his services till 30.3.1974. After resigning from FCI, the petitioner joined Indian Petrochemicals Corporation Limited (in short '*IPCL*') at Baroda as a Research Officer. The petitioner was thereafter promoted as a Manager, then as a Senior Manager and thereafter as a Deputy General Manager.

4. As per the petitioner, on 22/12/1976 the respondent in its 73rd meeting of the General Body of the CSIR/Respondent, a decision was taken to liberalize the pension rules of the CSIR by allowing the service rendered by its employees in other organizations including PSU to be combined for pension benefits in CSIR. On 09.02.1977, all pending cases were directed to be given benefit and in case CPF contribution if any, had been received by an employee would be taken back by CSIR/Respondent. A circular No. 17 (92) 72 E-II, dated 18.03.1983 was issued by the Respondent/CSIR, stating that services rendered in Central/ State/ Autonomous Bodies/ PSUs/ Municipal Bodies/ Universities would be counted for pensionary benefits in the CSIR but the said circular would be applicable only for those employees, who had joined the CSIR before 21.04.1972.
5. On 12.07.1990, the petitioner received an offer of appointment from the respondent informing him that the Hon'ble Prime Minister of India/ President CSIR, on the recommendation of a Search Committee. The petitioner was appointed as a Director of IIP of CSIR. Thereafter on 20.09.1990, the petitioner assumed the charge as a Director, IIP, Dehradun as notified vide Office Memorandum No.6(1256)/90 Estt dated 24/09/1990. Initially, the petitioner retained his lien with IPCL for two

years and was absorbed in CSIR service on expiry of said period of lien. On 14/05/1991, respondent framed guidelines regarding appointment/contract of scientists/Directors with CSIR. As per the guidelines, if no option was exercised within the stipulated period, an employee would deem to have opted for the pension scheme as per CCS (Pension) Rules, 1972. The Respondent also issued a circular No. 3(27)/186-EII dated 14.06.1995 wherein it was stated that the CSIR employees joining public sector undertakings/Autonomous Bodies under the State Government or Joint Public Sector would get pro-rata pension benefits from the CSIR. The petitioner vide his D.O. No.DIR/IIP/95 dated 14/11/1995 wrote to Dr. R.A Mashelkar, Director General, CSIR pointing out that the circular dated 14/06/1995 was silent about whether it will cover those also who joined CSIR service from Public Sector Undertakings/Joint Sector companies and pleaded that employees joining CSIR from Public Sector Undertaking/Joint Sector companies should also be eligible for getting the pension on the basis of combined service however, the petitioner did not get any reply from the Respondent. On 25/01/1999, a circular was issued to all Directors/Heads of National Labs that in the 146th meeting of Governing Body held on 29th December 1998, it was decided to give another opportunity to all existing CPF beneficiaries to exercise their option to switch over to the Pension Scheme, as made applicable to council employees. A form was prescribed to be filled within 3 months from the date of the circular. The form had to be given individually to each employee. On 31/01/1999, the petitioner superannuated as Director, IIP, Dehradun. The petitioner accepted the amount of Central Provident Fund (CPF) at the time of his retirement.

6. As per the petitioner, one Dr. N.K Jain who had retired from CSIR at Palampur Himachal Pradesh, was given the benefits of his past service by

an order dated 31/05/1999 passed by the Tribunal in OA No.734/1998. In another case also one Dr. B.V Reddy, a Scientist of CISR had gone on deputation to a state PSU in Andhra Pradesh and absorbed there. After resigning from the PSU he came back to respondent's service on a fresh appointment. When he was denied pension of combined service of CSIR & state PSU, he filed OA No.117 of 1999, before the Tribunal. By an order dated 20/12/1999, the Tribunal directed the respondent to combine his PSU service with two spells of CSIR service for pensionary benefits. The order of the Tribunal had been implemented by the Respondent.

7. It is also averred in the petition that in August, 2001 one Sh.S. N. Rai, who retired as a Deputy Secretary from the respondent in August, 2001. Sh. S. N. Rai requested the respondent to count his PSU services of 24 years for pensionary benefits. As his request was rejected, he filed OA 185/2001 before the Tribunal. The Tribunal allowed the application of Sh. S. N. Rai and directed the respondent to count his past services rendered in the PSU, treat his service as pensionable service and pay him pension and other retiral benefits. Writ petition filed by the Department was dismissed by a speaking order dated 21.11.2007 upholding the view of the Tribunal. Respondent filed SLP (C) No.3046/2008 against the said judgment which was also dismissed by the Supreme Court of India vide order dated 24/03/2008.
8. As per the petitioner, the case of the petitioner was similar to the case of S N Rai (supra) and on that consideration the benefit of pension should be given to the petitioner as well.
9. Petitioner vide letter dated 21/07/2008 made a representation to the respondent wherein the petitioner requested to count his service for pensionary benefits on combined service, on the same lines as given to S.N Rai. The respondent vide letter dated 25/8/2009 rejected the

representation of the petitioner. Being aggrieved by the order dated 25/08/2009 of the respondent, the petitioner filed the OA No.2158/2011 before the Tribunal. The OA filed by the petitioner was dismissed by an order dated 21th April, 2016.

10. Mr. Sushil Salwan, learned counsel for the petitioner, submits that the respondent had issued guidelines dated 14.05.1991 with regard to modify the terms and conditions of offer of appointment/contract in respect of Scientists/Directors in CSIR. As per the said guidelines, if no option is exercised within the stipulated period, the employees shall deem to have opted for the pension scheme as per CCS (Pension) Rules, 1972. Counsel further submits that the respondent issued the Circular No.3(27)/114/86-EII dated 14.06.1995 stating that the CSIR employees joining Public Sector Undertakings/Autonomous Bodies under the State Government or Joint Sector companies would be eligible for getting the benefit of pension on the basis of combined service.
11. It is further contended by counsel for the petitioner that the Tribunal has erred in dismissing the OA primarily on the ground that the same is barred by limitation and on account of delay and laches. Mr. Salwan further submits that the Tribunal has failed to take into account the settled position of law and judgments rendered by the Supreme Court of India in the case of **UOI Vs. Tarsem Singh**, reported at (2008) 8 SCC 648, relevant portion of para No. 7 & 8 read as under:-

“7. 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.

8. 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.”

12. Learned counsel for the petitioner, submits that the claim for pension is a continuing cause of action there can be no limitation It is also the contention of counsel for the petitioner that the respondent followed up their policy technically to extend the benefit to a view chosen by employee and, thus, the finding of the Tribunal is a gross miscarriage of justice. The counsel for the petitioner has placed reliance on the circular dated 14.05.1991 issued by the CSIR along with guidelines which reads as under:-

“REGISTERED

**“COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH
RAFI MARG, NEW DELHI-110001**

No.17(197)/90-E.II

Dated 14.5.1991

From

*Joint Secretary
Council of Scientific & Industrial Research*

To

*The Directors/ Heads of all
National Laboratories/ Institutions.*

*Sub: Extension of pensionary benefits to the Scientists appointed
on contract and Directors of National Labs. / Instts.*

Sir,

I am directed to state that keeping in view the larger interests of mobility of Scientific talent among the various S&T/R&D Departments/ Organizations in the country, a committee was constituted to look into the matter for extending grant of pensionary benefits to the Scientists appointed on contract and Directors of National Laboratories / Institutes, within the framework of CCS (Pension) Rules, 1972. The recommendations made by the Committee and subsequently concurred in by the IFA were placed before the Governing Body at its meeting held on 22.2.1991. In pursuance of the approval accorded by the Governing Body in the aforesaid meeting, it is notified for information, guidance and necessary action to all concerned that the service conditions of Scientists appointed on contract from open market; on foreign service/ lien/EOL basis from other Departments/ Organizations on deputation basis (if permissible under the Recruitment Rules); existing Scientists continuing on contract basis; and Directors appointed from open market, Directors appointed on foreign service / lien/EOL basis from other organizations, on deputation basis (if permissible under the Rules) and existing Directors containing on CPF system will be regulated as per the enclosed guidelines approved by the Governing Body, as mentioned above. Specimen of the terms and conditions in respect of Scientists appointed on contract and Directors are enclosed for reference. Also a specimen of the option to be exercised by the Scientists appointed on contract/Directors on 6 years tenure basis, either in favour of CCS (Pension) Rules, 1972 or to continue under CPF Rules is enclosed for necessary action. A copy of this notification

may kindly be kept in the library and also displayed on the Notice Board for wide circulation.

Kindly acknowledge receipt.

Yours faithfully,

sd/-

(K.L.Katyal)

Under Secretary

Encl.: As above

Copy to:

- 1. S.P.As to ADG, CSIR/ Director (EC)/JS(A)/IFA at CSIR Hqrs.*
- 2. Sr.FAOs of all Labs./ Instts.*
- 3. Deputy F.A. (Finance/Budget), FAOs at CSIR Hqrs.*
- 4. Sr. DS (RA) Vig. (PPS)/US (CO)/ at CSIR Hqrs.*
- 5. All Divisionsional/Sectional incharges for information.*
- 6. P.S. to DGSIR*
- 7. S.O. (1,2, 3) of E.II Section for information and immediate compliance.*

13. Mr. Salwan also submits that the petitioner was never aware of the fact that an opportunity was given to all the CPF beneficiaries to exercise their option to switch over to the pension scheme, as made applicable to the council employees as he had initially opted for the CPF scheme in his parent department.
14. Based on the circular dated 14.05.1991 and the guidelines annexed thereto, Mr. Salwan further submits that an opportunity was given to the employees to seek an option from the CPF to the Pension Scheme. Mr. Salwan, while relying on the guidelines, submits that in case an option was not exercised within the stipulated period, it was deemed that the an employee had opted for the pension scheme as per CCS Pension Rules 1972. The relevant portion of the guidelines reads as under:-

“GUIDELINES ABOUT THE LINE OF ACTION TO MODIFY THE
TERMS AND CONDITIONS OF OFFER OF
APPOINTMENT/AGREEMENT/CONTRACT IN RESPECT OF
SCIENTISTS/DIRECTORS ON THEIR APPOINTMENT IN CSIR
SERVICE

1. APPOINTMENT OF SCIENTISTS (OTHER THAN DIRECTORS)
- 2.
- A. DIRECT RECRUITMENT FROM OPEN MARKET (INCLUDING
FROM OTHER THAN GOVERNMENT/SEMI
GOVERNMENT/AUTONOMOUS BODIES ETC.

There is no objection to keep them on probation as per usual procedure.

A suitable clause may be inserted in the offer of appointment that at the time of initial appointment option will be given to the Scientists either to be governed by CPF or Pension under CCS (Pension) Rules, 1972. Option will be exercised within one month from the date of joining which will be notified and pasted in Service Book for record. The option once exercised shall be treated as final. In case no option is exercised within the stipulated period, he shall be deemed to have opted for pension scheme as per CCS (Pension) Rules, 1972.

B. APPOINTMENT OF FOREIGN SERVICE/LIEN BASIS

They may be kept on probation as per practice during foreign service/lien period.

In case of absorption, it should be notified and thereafter option of the Scientists concerned obtained either to be governed by CPF or Pension under CCS (Pension) Rules, 1972. This option will be exercised within one month from the date of notification for absorption orders which will be pasted in the Service Book for record.

The option once exercised shall be treated as final. In case no option is exercised within the stipulated period, he shall be deemed to have opted for pension scheme as per CCS (Pension) Rules, 1972.

C. DEPUTATION (IF PERMISSIBLE UNDER THE RECRUITMENT RULES)

Scientists will not be kept on probation.

Absorption in CSIR service after following the normal procedure prescribed for recruitment will be notified and thereafter Scientists concerned will be given an option either to be governed by CPF Rule or Pension under CCS (Pension) Rule, 1972. This option will be exercised within one month from the date of notification of absorption in CSIR service.

The option once exercised shall be treated as final. In case no option is exercised within the stipulated period, he shall be deemed to have opted for pension scheme as per CCS (Pension) Rules, 1972 extant Government of India orders on the subject.

D. EXISTING SCIENTISTS

For the existing Scientists who are governed by CPF scheme of the CSIR as per clause III of their terms and conditions, modified clause III of the terms and conditions shall be notified to the individual Scientists with the stipulation that they should furnish their written consent the modification in the terms and conditions to their respective heads of offices.

The written consent so received shall be pasted in the service record of the individual.

Simultaneously the individual shall also be furnished with an option form to opt either for pension as per CCS (Pension) Rules, 1972 or to the continue under the existing CPF Scheme of the CSIR as per existing terms and conditions. The individual shall be required to exercise his option and submit the option form duly completed to their respective heads of offices within three months from the date of issue of such notification.

The option once exercised shall be treated as final. In case no option is received the individual shall be deemed to be governed by the existing terms and conditions viz. CPF Scheme.”

15. Reliance is also placed on a subsequent Circular dated 25.01.1999 which

was almost on identical lines, however, another opportunity was granted to the employees, who were governed by the CPF Scheme, to exercise their option. Circular dated 25.01.1999 reads as under :-

*“COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH
Anusandhan Bhavan, 2, Rafi Marg, New Delhi-110001*

No.17(197)/90-E.II

Dated 25.1.1999

*From
Joint Secretary (Admn.)*

To

*The Directors/ Heads of
all National Labs. / Instts.*

*Sub: Extension of the benefit of option to switchover to the
Pension Scheme to the Scientists who are presently governed by the
CPF Scheme.*

Sir,

I am directed to state that consequent upon the abolition of the contractual system of appointment of Scientists in Group-IV and all future appoints made thereafter being governed necessarily by the Pension Scheme, the scientists who are continuing to be governed by the Contributory Provident Fund Scheme had been requesting for extending them another opportunity for exercising the option in favour of CCS (Pension) Rules, 1972.

The matter was placed before the Governing Body for its consideration at its 146th meeting held on 29th December 1998. The Governing Body considered the matter and after due deliberations approved giving another opportunity to all the existing CPF beneficiaries to exercise option to switchover to the Pension Scheme, as made applicable to the Council employees, as a final chance to the concerned employees.

It is accordingly requested that all the existing CPF beneficiaries (including those who may presently be on leave,

foreign service, deputation within or outside India etc.) should be asked to exercise the option, which shall be irrevocable, in the prescribed option form as per specimen enclosed herewith, within three months from the date of issue of this circular.

For the above purpose, the option form should be delivered individually against receipt to all the employees presently governed under the CPF Scheme and the options so exercised by them should be pasted in their Service Books. COAs/AOs shall be personally responsible for obtaining the options by the due date i.e. within three months from the date of issue of this circular.

It is requested that the above decision may kindly be brought to the notice of all concerned employees in your Lab./ Instt. for their information, guidance and necessary action. In addition to giving the copies of this circular individually to all the Scientists presently governed under CPF Scheme, copies may also be enclosed to all the Heads of Divisions/Section of your Lab./Instt. for bringing it to the notice of all the staff members. Copies may also be displayed on all the Notice Boards as the concerned employees will not be given any further chance to switchover to Pension Scheme after the above stipulated dated under an circumstance.

*Yours faithfully,
sd/-
(B.S.Gaira)
Deputy Secretary*

Encl.: As above

Copy to:

- 1. COAs/ AOs of all the Labs. / Instts.*
- 2. All Heads of the Divisions/Sections at CSIR Hqrs./ Complex.*
- 3. Dr.M.Bapuji, General Secretary, CSIR-SWA, C/o RRL, Bhubaneswar for information.*

16. Learned counsel for the petitioner submits that the Circular dated 25.01.1999 has escaped the attention of the petitioner, as it was issued just prior to the date of his superannuation i.e. 31.01.1999 and since he was

not aware of the fact that he could exercise his option as late as on 25.01.1999 with regard to Pension Scheme, he accepted his Contributory Provident Fund amount without any protest after superannuation. It is the stand of the petitioner that he had at that point of time opted for the Pension Scheme and merely filing up of form for nomination has nothing to do with the exercise pertaining to the CPF Scheme or the Pension Scheme.

17. Mr. Salwan also submits that the stand of the respondent before the Tribunal was to the extent that the form giving option of CPF or pension scheme was not available with the respondent.
18. Reliance has been placed by Mr. Salwan on the decision rendered in an identical matter pertaining to an employee of the same organization to the case of one Sh. S. N. Rai, who retired as a Deputy Secretary from the respondent in August, 2001. Sh. S. N. Rai requested the respondent to count his PSU services of 24 years for pensionary benefits. As his request was rejected, he filed OA 185/2001 before the Tribunal in the year 2003. The Tribunal allowed the application of Sh. S. N. Rai and directed the respondent to count his past services rendered in PSU, treat his service as pensionable service and pay him pension and other retiral benefits. Writ petition filed by the Department was dismissed by a speaking order dated 21.11.2007 upholding the view of the Tribunal. On 24.03.2008, SLP (C)No.3046/2008 filed against the said judgment was also dismissed by the Supreme Court of India.
19. Mr. Salwan contends that the petitioner is identically placed as Sh.S. N. Rai. He further submits that the case of the petitioner was favourably recommended by the respondent to the Finance Ministry on 18.05.2009, however, his representation was rejected by the Ministry.
20. Mr. Salwan has strenuously urged before us that the petitioner has put his

32 years of life in the service of the nation. He is recipient of many National awards for various scientific achievements including life achievements award of Petrotech, received from the Prime Minister of India in January, 2014. He is a fellow of Indian Science Academy and also of Indian National Engineering Academy. He is the former Director of Indian Institute of Petroleum, Dehradun. He was also the Member of Oil Industry' Development Board and developed and commercialized 10 Technologies, 150 Papers with 56 patents and 3 books have been authored by him. 10 PHD students were guided by him. He worked as Deputy General Manager, Indian Petro Chemicals Corporation Ltd. From 1974 to September, 1990. Thereafter, he was the Director of Indian Institute of Petroleum from September, 1990 to January, 1999. On 12.07.1990, he received a letter from the respondent wherein it was stated that the Hon'ble Prime Minister of India, President of CSIR on recommendation of a Search Committee, had appointed him as Director of IPP a constituent establishment of CSIR.

21. Ms. Iyer, learned counsel for the respondent has opposed this petition firstly on the ground that there is no infirmity in the order passed by the Tribunal which requires any interference in proceedings under Article 226 of Constitution of India. She further submits that there has been no explanation with regard to the delay before the Tribunal and, thus, the Tribunal has rightly rejected the OA filed by the petitioner on the ground of delay and laches.
22. It is next contended by learned counsel for the respondent that the petitioner had categorically exercised his option in the year 1993 in favour of CPF scheme. At the time of superannuation, he had accepted the CPF contribution without any objection and, thus, at this stage petitioner cannot be allowed to set the clock back and be granted benefit of the

pension scheme.

23. Ms. Iyer, has further drawn the attention of the Court to the form filled by the petitioner in the year 1993 and based on the aforesaid form, the Circular dated 14.05.1991 would not be applicable to the petitioner as the form was filled subsequent thereto. Counsel further submits that the petitioner can not feign ignorance of the circular dated 25.01.1999 as he was a Director at that time and it is unexpected that being a Director and Head of the Institution, the circular would not have been marked to him and since the circular was issued prior to the retirement of the petitioner, he could have opted for the Pension Scheme.
24. In support of her above submission, learned counsel for the respondents has placed in the case of ***Union of India v. M.K. Sarkar***, reported at 2010 (2) SCC 59, more particularly paras 7 and 11, which read as under:

7. When a scheme extending the benefit of option for switchover, stipulates that the benefit will be available only to those who exercise the option within a specified time, the option should obviously be exercised within such time. The option scheme made it clear that no option could be exercised after the last date. In this case, the respondent chose not to exercise the option and continued to remain under the Contributory Provident Fund Scheme, and more important, received the entire PF amount on his retirement. The fact that the respondent was the head of his department and all communications relating to the offer of Eighth Option and the several communications extending the validity period for exercising the option for pension scheme, were sent to the heads of the departments for being circulated to all eligible employees/retired employees, is not in dispute. Therefore, the respondent who himself was the head of his department could not feign ignorance of the Eighth Option or the extensions of the validity period of the Eighth Option. In fact, as noticed above, in his application before the Tribunal the respondent refers to all the options. He is careful to say that he was not 'intimated' about the contents of the last order relating to extension of the option, but does not say that he was unaware of the order extending the benefit of option. The respondent consciously chose not to exercise the option as he

admittedly thought that receiving a substantial amount in a lump sum under the provident fund scheme (which enabled creation of a corpus for investment) was more advantageous than receiving small amounts as monthly pension under the pension scheme. In those days (between 1957 when the pension scheme was introduced and 1976 when the respondent retired) the benefits under the provident fund scheme and pension scheme were more or less equal; and there was a general impression among employees that having regard to average life expectancy and avenues for investment of the lump sum PF amount, it was prudent to receive a large PF amount on retirement rather than receive a small pension for a few years (particularly as there was a ceiling on the pension and as dearness allowance was not included in the pay for computing the pension).

11. The respondent relied on the decision of a two-Judge Bench of this Court in Union of India vs. D.R.R. Sastri - 1997 (1) SCC 514 in support of his claim. The said decision is clearly distinguishable on facts. In that case, the respondent, a railway employee, had gone on deputation to Heavy Engineering Corporation, and later resigned from railway service with effect from 26.6.1973 and was absorbed in the service of the said Corporation. When the Liberalised Pension Scheme was introduced by the Railway Board by letter dated 23.7.1974, an opportunity was given to all persons governed by the Provident Fund Scheme who were in service of Railways as on 1.1.1973 to opt for the pension scheme. The Railway Board directed that the availability of such option should be brought to the notice of all retired railway servants who were in service as on 1.1.1973, The respondent therein who had left the Railway service on 26.6.1973 was not informed of the availability of the option. He could not therefore exercise the option. In fact, he retired from service of the Heavy Engineering Corporation without any pension as that Corporation had also no pension scheme. The respondent therein approached the Central Administrative Tribunal in 1993 alleging that he came to know about the said option only in 1993 and that his representation dated 12.6.1993 for relief was rejected by the Railway Board on 13.7.1993. The Tribunal held that the respondent should be given the opportunity to exercise his option to shift to pension scheme, in terms of the Railway Board's letter dated 23.7.1974, as he was prevented from exercising his option by the failure of Railways to inform him about the option. The Tribunal also took note of the fact that another railway employee

was allowed to exercise the option long after the date for exercising the option had expired, but the respondent was not given a similar benefit. The said decision of the Tribunal was affirmed by this Court. The decision in D.R.R. Sastri is of no assistance as it does not lay down any proposition that the last date prescribed for exercising option is not relevant or that option could be exercised at any time, even if a last date had been stipulated for exercise of the option. That case was decided on its peculiar facts as the employee (who was on deputation and who resigned from the service of railways on 26.6.1973 when on deputation) was not made aware of the option to which he was entitled, even though there was a specific instruction that all employees who had retired after 1.1.1973 should be informed about the option. The facts of this case are completely different. Here the employee was in service of the Railways itself before and at the time of retirement. He was working as the Head of the Department and was receiving all communications relating to option for being circulated to all employees in his department. Therefore, the question of respondent not being aware of the option does not arise.”

25. Learned counsel for the respondents has also distinguished the case of the petitioner with that of S.N. Rai.
26. Learned counsel for the respondent has relied upon the OM dated 28.4.1993 by which the petitioner was informed that the previous service rendered by him at IPCL shall not be counted for any purpose in CSIR service, a stipulation which according to the respondent was not imposed on Sh.S.N. Rai. Counsel further submits that Sh.S.N. Rai had not accepted the benefit of the Provident Fund Scheme and, thus, the petitioner cannot rely upon the decision rendered by the Tribunal in the case of Sh.S.N. Rai, which has been upheld and attained finality.
27. Mr.Salwan, learned counsel for the petitioner, on instructions from the petitioner, who is present in Court, submits that as far as delay and laches are concerned, the petitioner is willing to make a statement that at best he would be entitled to the relief claimed three years prior to the filing of the OA before the Tribunal and he would, thus, restrict his relief accordingly.

Mr.Salwan further submits that the OM dated 28.4.1993, handed over in Court by the counsel for the respondent, cannot be relied upon at this stage as the said OM, admittedly and as fairly stated by the counsel for the respondent, did not form part of the record of the Tribunal. Thus, the petitioner would have no opportunity to assess the applicability of OM dated 28.4.1993 or to ascertain whether any such embargo was imposed on S.N.Rai or not. Counsel also submits that once the case of S.N. Rai had attained finality and the respondent had granted benefit not only to S.N. Rai but also to Dr.N.K. Jain and Dr.V.V. Reddy, the petitioner is now the only employee remaining, who has not been granted the benefit.

28. Mr.Salwan also relies on the Office Memorandum dated 1.5.1987 based on the Fourth Pay Recommendations. Paras 3, 3.2 and 3.3. reads as under:

- “3. *All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of these orders will be deemed to have come over to the Pension Scheme.*
- 3.2 *The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.*
- 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 found to the Government, the Government contribution 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 30.09.1987.”*

29. We have heard learned counsel for the parties and considered their rival submissions. There is no dispute about the facts of the case.
30. The first question, which arises for consideration is as to whether the petitioner had exercised his option for CPF Scheme or not.
31. Learned counsel for the respondent has strongly urged before us that the petitioner had in fact exercised his option and once he had exercised his option then the petitioner at this stage cannot complain. A photocopy of the form, sought to be relied upon by the counsel for the respondent, is placed on record at page nos. 219-222A of the paper book.
32. We have examined the form, which is sought to be relied upon by the counsel for the respondent. Looking at the form, we are unable to decipher the objective of this form except that this form contains the name of the subscriber, his particulars, designation, emoluments and the name of the fund as CPF. This form runs into four pages. The concluding page, which bears the signature of the petitioner, is what has been termed as 'Form of Nomination' in which the petitioner has nominated his wife. The said form does not lend any clarity with regard to the specific purpose for which it was filled up. The stand taken by the respondent in his counter affidavit filed before the Tribunal was that *"After absorption in CSIR as Scientists Group IV (7), Dr.Rao submitted the Nomination Form of CPF in favour of his wife on 26.7.1993. The form of option of GPF/CPF is not available in the file/records, however, from the nomination form, it is construed that he opted for CPF as the word GPF has been struck off in the printed form of nomination."*
33. Having regard to the stand taken by the respondent themselves before the Tribunal that the option form of the petitioner was not available in the file/records, it cannot be said that the petitioner had opted for the CPF

Scheme and the form, sought to be relied upon by the counsel for the respondents, in this Court is in fact a nomination form with regard to CPF, of which the petitioner was already a member.

34. The second question, which arises for consideration, is to the effect of the three circulars, relied upon by the counsel for the parties.
35. A reading of Clause 3.2 of the OM dated 1.7.1987, which has been reproduced in para no.25 aforegoing, would show that if no option is received by the Head of the Office by the cut off date, the employee would be deemed to have come over to the Pension Scheme.
36. The Circular dated 14.5.1991, which has been extracted in para 12 aforegoing, would show that keeping in view the larger interests of mobility of scientific talent amongst various S&T/R&D Departments/organizations in the country, a committee was constituted to look into the matter for extending grant of pensionary benefits to the scientists appointed on contract and Directors of National Laboratories/Institutes within the frame work of CCS (Pension) Rules 1972. The guidelines annexed to the Circular dated 14.5.1991, more particularly para 2A, which has also been extracted in para 14 aforegoing, would also show that in case the option is not exercised within the stipulated period it was deemed that a person had opted for the Pension Scheme as per CCS (Pension) Rules 1972.
37. The third Circular, though come into force within one week of retirement of the petitioner, is primarily to the same effect. A reading of all the three circulars would lead only to one conclusion i.e. the underlying aim and objective of these circulars was to include the scientists into the Pension Scheme. It is for this reason that as per the guidelines annexed to the Circular dated 14.5.1991 or the OM issued after the Fourth Pay Commission, it was made clear that should a person not exercise his

option specifically with regard to CPF/GPF he would have deemed to come over in the Pension Scheme. Having said that the form, sought to be relied upon by the respondent, was a form only for the purpose of nomination and not an option (specific form) exercising an option for the CPF Scheme, the logical conclusion would be that the petitioner would have deemed to have come to the Pension Scheme.

38. As far as the submission of learned counsel for the respondent that the petitioner having feign ignorance of the form of 25.1.1999 is concerned, there is force in the same but we have carefully examined the form of 25.1.1999. A reading of this Circular would show that the onus was on the respondent. Paragraph 3 states that:

“It is accordingly requested that all existing CPF beneficiaries (including those who may presently be on leave, foreign service, deputation within or outside India, etc.) should be asked to exercise the option, which shall be irrevocable, in the prescribed option form as per specimen enclosed herein, within three months from the date of issue of this Circular.”

(Emphasis Supplied)

39. The Circular dated 25.1.1999 also states that the option form should be delivered individually to all the employees presently governed under the CPF Scheme and the options so exercised by them should be pasted in their service book. This Circular further goes on to state that the COAs/OAs should be personally responsible for obtaining the options by the due date i.e. within three months from the date of issue of this Circular.
40. Nothing has been placed on record either before us or before the Tribunal to show that the petitioner was either asked to exercise his option or the option form was delivered individually to the petitioner against his receipt.
41. In our view, in the absence of the respondents, having discharged their

responsibility, which was fixed upon them by the Circular dated 25.1.1999, the petitioner cannot be faulted for not filling up the form as per the circular of the respondent.

42. Time and again the Courts have highlighted that the place of scientist is their laboratory and not Courts. The petitioner, as per the details provided, is a senior Scientist. He was picked up by the Prime Minister of India to serve the respondent organisation. We find that the respondent has not applied the Circulars, which have been circulated by them, and in fact forced the petitioner into unnecessary litigation.
43. The petitioner, in our view, has never exercised his option in the year 1993 as the form placed on record is not as per the specification and specimen to be provided. Subsequently in the year 1999, the respondent failed to discharge its onus, which was fixed on them as per the Circular.
44. The underlying principle in all the three circulars is that in case an employee does not specifically give an option for the CPF Scheme, he would be deemed to have given choice of Pension Scheme. This has been overlooked by the respondent. We, however, agree with the submission of the counsel for the respondent, there has been delay on account of the petitioner approaching this Court.
45. Having regard to the peculiar facts of this, the present petition is allowed. The present writ petition stands disposed of with the following directions:
 - (i) The impugned order dated 21.4.2011 passed by the Tribunal and the order dated 25.8.2009 passed by the respondent are set aside.
 - (ii) The petitioner will be granted benefit of pension scheme only from three years prior to his filing the OA before the Tribunal.
 - (iii) The petitioner would refund the entire amount claimed by

him in the CPF Scheme to the respondent from the date a calculation/final amount is provided by the respondent. The petitioner will not pay interest over the CPF amount.

- (iv) The respondent will give all the benefits of Pension Scheme to the petitioner. The pensionary benefits will be released to the petitioner within three months from the date of receipt of this order. The petitioner will not claim any interest on the amount which may be released to him under the Pension Scheme.
- (v) In case, the benefits are not released to the petitioner within three months of receipt of this order, the petitioner will be entitled to interest at the rate of 9% per annum.
- (vi) It is made clear that the interest of 9% per annum would be on the amount less the amount which is payable by the petitioner to the respondent.
- (vii) No order as to costs.

G.S.SISTANI, J

I.S.MEHTA, J

SEPTEMBER 02, 2016

b/msr