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

+ **LPA 765/2023**

PROF. NEERAJ KHARE

..... Appellant

Through: **Ms. Mukti Chaudhry, Advocate**

versus

INDIAN INSTITUTE OF TECHNOLOGY, DELHI AND ORS

..... Respondents

Through: **Mr. T. Singhdev, Mr. Tanishq Srivastava, Mr. Abhijit Chakravarty, Mr. Bhanu Gulati, Ms. Anum Hussain, Mr. Aabhaas Sukhramani and Ms. Ramanpreet Kaur, Advocates for R-1**

Mr. Jayesh Unni Krishnan, Mr. Bhuvnesh and Mr. Udit Sharma, Advocates for R-2 & 3

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Date of Decision: 28th November, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present appeal has been filed challenging the Judgment dated 20th October, 2023 passed by the learned Single Judge in *W.P.(C) 1125/2022* by which the underlying writ petition filed on behalf of the appellant has been dismissed. The writ petition had been filed by the appellant praying for a direction to the respondents to allow the appellant to switch over from Contributory Provident Fund Scheme ("CPF Scheme") to Gratuity-Cum-Provident Fund Scheme ("GPF Scheme"). Since the said prayer has not been



granted by the learned Single Judge, the present appeal has been filed.

2. The facts of the case in brief, are as follows:

2.1 The appellant was initially appointed as ‘Scientist B’ with National Physics Laboratory (“NPL”)/ respondent no.2 on probation for a period of two years w.e.f. 02nd December, 1988. Subsequently, the service of the appellant was confirmed on the same post by respondent no.2 w.e.f. 01st December, 1990.

2.2 In pursuance to Circular of Council of Scientific and Industrial Research (“CSIR”)/ respondent no.3 dated 25th January, 1999, the appellant opted for CPF Scheme while employed with the respondent no.2 vide his option dated 30th March, 1999.

2.3 The appellant after completing 17 years of his employment with respondent no.2/NPL applied through proper channel for the post of Associate Professor with Indian Institute of Technology, Delhi (“IIT Delhi”)/respondent no.1 in the year 2005. On 10th October, 2005, the respondents no.2 and 3 accepted the technical resignation of the appellant and relieved him w.e.f. 13th October, 2005 to join respondent no.1/IIT Delhi as Associate Professor.

2.4 Appellant was appointed as Professor by respondent no.1/IIT Delhi w.e.f. 14th October, 2005 on probation for a period of one year. The appellant upon technical resignation also retained lien in respondent no.2/NPL for a period of two years, i.e., w.e.f. 14th October, 2005 to 13th October, 2007.

2.5 The appellant while maintaining lien with respondent no.2/NPL vide his representation dated 28th March, 2007 requested the respondent no.2 and 3 to allow the appellant to switch over to GPF. The said request of the



appellant was rejected by the NPL on 05th October, 2007. The appellant continued to be governed under the CPF Scheme, which the appellant was continuing at the time of his service with respondent no.2/NPL.

2.6 New Pension Scheme (“NPS”) was introduced vide notification dated 22nd December, 2003 applying to new entrants/new recruits of Central Government joining w.e.f. 01st January, 2004. On 19th September, 2008, the appellant requested respondent no.1/IIT Delhi to enroll him under the NPS. The appellant was allowed to join the NPS vide Memorandum dated 30th January, 2009.

2.7 Subsequently, the IIT Delhi, requested NPL to approve the transfer of funds accumulated in the CPF account of the appellant along with leave balance and gratuity amount. Thus, the appellant’s accumulated CPF was transferred from respondent no.2/ NPL to respondent no.1/IIT Delhi on 26th April, 2010. Likewise, the gratuity and leave encashment of 300 days were transferred from respondent no.2/NPL to respondent no.1/IIT Delhi on 09th October, 2012.

2.8 In the interregnum, respondent no.3/CSIR vide its Board Resolution dated 06th April, 2011 allowed all Scientists who were appointed before 01st January, 2004 and confirmed w.e.f. 28th November, 1984 or thereafter, to be covered by pension scheme automatically from the date of their confirmation.

2.9 Similarly, respondent no.1/IIT Delhi also vide its Board Resolution dated 07th August, 2013 resolved that all employees in service of respondent no.1/ IIT Delhi till 31st December, 2003 shall be deemed to have switched over to GPF Scheme.

2.10 In the meanwhile, the appellant requested to switch from NPS to CPG



Scheme, which was same as CPF Scheme. The request was considered by the Board of Governors of IIT, Delhi, wherein the appellant was allowed to enroll under CPG Scheme on 15th February, 2013.

2.11 Subsequently, the appellant vide his letters dated 04th April, 2015, 05th July, 2016 and 22nd November, 2018, requested the respondent no.1/IIT Delhi for switching from CPF Scheme to GPF Scheme. On 25th March, 2019, on appellant's request, the respondent no.1 issued a letter to respondent no.2 to pass on the retirement benefits (under GPF) of appellant for past service for pension purpose in respondent no.1/IIT, Delhi, which will enable respondent no.1 to take suitable action.

2.12 Vide its letter dated 11th/12th November, 2020, the respondent no.2 informed the appellant that his request to switch over cannot be accepted since his CPF accumulated funds had already been forwarded to IIT, Delhi.

2.13 Since despite various representations made on behalf of the appellant, his request to switch from CPF to GPF Scheme was not accepted by the respondents, a legal notice dated 09th September, 2021 was issued by the appellant to respondent no.2/NPL seeking necessary directions and orders to pass on the retirement benefits under GPF Scheme. No response was received by the appellant to the said legal notice. Thereafter, the appellant filed the writ petition being *W.P.(C) 1125/2022* before the learned Single Judge praying for directions to the respondents to allow the appellant to switch over from CPF Scheme to GPF Scheme.

2.14 By the impugned judgment dated 20th October, 2023, the learned Single Judge, dismissed the writ petition filed on behalf of the appellant. Hence, the present appeal has been preferred.

3. On behalf of the appellant, the following submissions have been



made:

3.1 The GPF Scheme was introduced after 01st January, 1986 in furtherance of 4th Pay Commission recommendation. According to the same, all employees who were appointed after 01st January, 1986 would be covered mandatorily under the GPF Scheme. Since the appellant was appointed w.e.f. 02nd December, 1988, there was no question of obtaining any consent from him to continue with CPF Scheme.

3.2 The continuance of CPF Scheme after 01st January, 1986 was only with regard to Central Government employees who had already opted to the then existing CPF Scheme prior to 01st January, 1986 and continued in employment after 01st January, 1986. For them, an option was given by issuing instructions by the Government of India, either to remain with the erstwhile CPF Scheme or to switch over to the GPF Scheme. The last date of option to be exercised in that regard was fixed on 30th September, 1987. Therefore, the issue of option which is emphasized by the respondents can never be in relation to the appellant, who was admittedly appointed for the first time with respondent no.2/ NPL on 02nd December, 1988.

3.3 Despite the 4th Pay Commission mandatorily requiring employees to be covered under GPF Scheme after 01st January, 1986, obtaining option of CPF or GPF after 01st January, 1986 by the respondent no.2/NPL from the appellant, was fundamentally flawed and based on wrong premise. The 4th Pay Commission made it clear that employees appointed after 01st January, 1986 will be covered mandatorily under the GPF Scheme.

3.4 The option given by the appellant on 30th March, 1999 in pursuance to Circular dated 25th January, 1999 of the respondent no.3, was made redundant in terms of Clause 1 of the Board Resolution dated 06th April,



2011, as it deemed to apply only on the contractual period. However, the appellant was confirmed w.e.f. 02nd December, 1988.

3.5 Clause 4 of the Board Resolution dated 06th April, 2011 will not apply to the appellant, as the same applied to only those Scientists who did not exercise option till the date of the Board Resolution dated 06th April, 2011. Such Scientists will be deemed to have opted for CPF Scheme for the period of service rendered under contract prior to their confirmation.

3.6 The Letter dated 25th March, 2019 of the respondent no.1 clearly demonstrates that the respondent no.1 had not declined the appellant to switch over from CPF Scheme to GPF Scheme, but rather wanted the confirmation from respondent no.2 and 3 in this regard.

4. Per contra, learned counsel appearing on behalf of respondents justified the impugned Judgment passed by the learned Single Judge.

5. We have heard learned counsel for the parties and perused the record.

6. The appellant joined the service of respondent no.2 on 02nd December, 1988. He exercised his option to continue to be governed under the existing CPF Scheme vide option dated 30th March, 1999, which is reproduced as hereunder:

“OPTION FORM

(Option* to be exercised within three months from 26.01.1999)

In pursuance of CSIR Circular letter No. 17/197/90.E.II dt. 25.01.1999, I Neeraj Khare designation Scientist C Lab/Inst. NPL hereby exercise an irrevocable option in favour of the CCS (Pension) Rules 1972 as made applicable to Council Employees

OR

I opt to continue to be governed under the existing CPF Scheme with the clear understanding that this is the final chance no further option to switch over to pension scheme shall be available to me.



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Neeraj Khare
Designation Scientist C

7. The appellant was relieved from respondent no.2 w.e.f. 13th October, 2005, to join respondent no.1 as an Associate Professor after retaining lien for 2 years with the respondent no.2.

8. Thereafter, the appellant requested for conversion of his pension scheme from CPF Scheme to GPF Scheme on 28th March, 2007. The said request of the appellant was rejected by respondent no.3 and the same was communicated to the appellant vide Office Memorandum dated 05th October, 2007. By the said Office Memorandum dated 05th October, 2007, the appellant was apprised of the fact that his request had been denied as he had previously exercised his option for CPF Scheme. The Office Memorandum dated 05th October, 2007 issued by respondent no.2, reads as under:

**“NATIONAL PHYSICAL LABORATORY
Dr. K. S. Krishnan Marg
New Delhi -110012**

Dated 05.10.2007

No. 6/3570/2007/E-II

OFFICE MEMORANDUM

With reference to his application dated 28.03.2007 regarding switch over from CPF to GPF scheme, Dr. Neeraj Khare, Scientist E-II is hereby informed that his request has been considered in the light of provision of rules and in consultation with CSIR Hqrs. It is regretted, the same cannot be acceded to since he has exercised his option for CPF in pursuance of CSIR letter dated 25.01.1990, and option for pension scheme has not been extended thereafter.

Sd/
(BALRAJ SINGH)
SECTION OFFICER

Dr. Neeraj Khare
Associate Professor
Department of Physics
Indian Institute of Technology



*Hauz Khas
New Delhi- 110016*

9. This Court notes that vide his letter dated 19th September, 2008, the appellant had requested the IIT Delhi to enroll him under the NPS. Thus, vide Memorandum dated 30th January, 2009, the appellant was allowed to join the NPS. Subsequently, the appellant requested to switch from NPS to CPG Scheme of respondent no.1, which was the same as CPF Scheme. The request of the appellant was considered by the Board of Governors of IIT, Delhi and the appellant was allowed to enroll under the CPG Scheme w.e.f. 15th February, 2013, vide Office Memorandum dated 06th May, 2013 issued by respondent no.1, which reads as follows:

***“INDIAN INSTITUTE OF TECHNOLOGY DELHI
HAUZ KHAS NEW DELHI – 16***

No.IITD/IESI/E-I/U-2/1570

Dated: 6/5/2013

OFFICE MEMORANDUM

The request of following Professors regarding admitting them in the CPG Scheme of the Institute has been considered by the Board of Governors in its meeting held on 15.2.13 and agreed to admit them in the CPG Scheme of the Institute:-

<i>S.No.</i>	<i>Name & Deptt.</i>	<i>Name of Parent organization</i>	<i>Date of joining at IIT Delhi</i>	<i>Name of Scheme presently enrolled in IITD</i>
<i>1.</i>	<i>Prof. Seyed E. Hasnain School of Biological (E.C. No. 16351)</i>	<i>University of Hyderabad</i>	<i>1.4.2011</i>	<i>Nil</i>
<i>2.</i>	<i>Prof. Neeraj Khare Deptt. of Physics (E.C. No.16088)</i>	<i>NPL, New Delhi</i>	<i>14.10.2005</i>	<i>NPS</i>



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(P.G. Basak)
Deputy Registrar (E-I)”

10. This Court also notes that in view of the various representations made by the appellant for switching from CPF/CPG Scheme to GPF Scheme, the respondent no.1 vide letter dated 25th March, 2019, had requested respondent no.2 to clarify as to whether it would pass on the retirement benefits under the GPF Scheme for the period of his service with respondent no.2 to the respondent no.1, for the purpose of counting his past service for calculation of pension by respondent no.1. By letter dated 11th/12th November, 2020, the respondent no.2 categorically informed the respondent no.1 that the appellant while in service with them had voluntarily opted for CPF Scheme on 30th March, 1999 and that his CPF accumulation fund had already been forwarded to respondent no.1. The said letter dated 11th/12th November, 2020 issued by respondent no.2 reads as under:

**“CSIR - NATIONAL PHYSICAL LABORATORY
(Council of Scientific & Industrial Research)
Dr. K.S. Krishnan Marg, New Delhi-110012**

Ref. 6/3750/88-E-II

Dt:11.11.2020

*To
Prof. Neeraj Khare
Coordinator,
NRF, Physics Department
IIT, Delhi, Hauz Khas,
New Delhi – 110016*

Sub: Switching over to GPF from CPF/CPG Scheme-reg.

*Sir,
In reference to IIT letter no. IITD/IESI/2019/88509, dated 25.03.2019 and Dr. Khare's letter dated 10.06.2020, it is submitted that Dr. Neeraj Khare, Ex. Principal Scientist was governed under CPF scheme during his service tenure in CSIR-NPL (i.e. from 02.12.1988 to 13.10.2005) as*



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per option exercised by him against CSIR circular letter no. 17/197/90.E-II dated 25.01.1999.

Further Dr. Khare has made a request dated 07.09.2007 to CSIR Hqrs regarding switch over from CPF to GPF and the same was denied by CSIR Hqrs vide its letter dated 24/26.09.2007 stating that option for pension scheme having not been extended by CSIR after 25.01.1999.

Further, Dr. Neeraj Khare, Ex. Principal Scientist resigned from this laboratory w.e.f. 13.10.2005 and absorbed permanently at IIT, Delhi and his CPF accumulation fund has already been forwarded to IIT Delhi and he was not on the roll of CSIR-NPL on 06.04.2011 when CSIR has again extended the option for switchover of pension scheme vide CSIR order no. 5-1(58)/2008-PD, dated 06.04.2011, therefore his request to switchover from CPF to GPF cannot be considered in any ways at the level of CSIR-NPL.

*R.G. Meena
Section Officer*

Copy to:

*Joint Registrar (Estt-I)
Indian Institute of Technology
Delhi 110016"*

11. Hence, it is apparent that the appellant was covered under the CPF Scheme while working with respondent no.2 in view of the option exercised by him in this regard on 30th March, 1999. After joining the respondent no.1 on 14th October, 2005, the appellant was originally covered under the NPS. However, upon his request dated 19th September, 2008, he switched to the CPG/CPF Scheme. Subsequently, the appellant started making representations to permit him to switch from CPG/CPF Scheme to the GPF Scheme. Thus, it is evident that the appellant has opted for the CPF Scheme on multiple occasions.

12. The contention of the appellant as regards the option to switch over from CPF Scheme to GPF Scheme in terms of Board Resolution dated 06th April, 2011 issued by respondent no.2, is found to be totally unmerited. At



the time of issuance of Board Resolution dated 06th April, 2011 by respondent no.2, the appellant was not working with respondent no.3 and the said Board Resolution was not applicable to him. The appellant had resigned from respondent no.2 w.e.f. 13th October, 2005 and absorbed permanently with respondent no.1.

13. It is also to be noted that at the time of joining respondent no.2, the appellant had opted CPF Scheme. Further, the appellant's CPF accumulation funds were transferred to respondent no.1. When respondent no.2 again extended the option for their employees for switch over to pension scheme, the appellant was working with respondent no.1. Therefore, it is manifest that the said option as contained in Board Resolution dated 06th April, 2011 was not applicable to the appellant.

14. The learned Single Judge has returned a clear finding that the appellant herein is not covered by the Board Resolution dated 06th April, 2011. The learned Single Judge has held as under:

"63. Bearing in mind the aforesaid, even if this Court takes into consideration the submission made by the petitioner that he has not exercised any option between CPF and GPF scheme, the petitioner shall be duly covered by point four of the abovesaid notification i.e., the petitioner is by default covered by the CPF scheme. However, it has been submitted by respondent No. 1 that the petitioner himself opted for the CPF scheme vide option form dated 30th March 1999, marked as annexure R-2 to the instant petition.

64. It has been alleged by the respondents that the petitioner while commencing his employment with respondent No.2 was covered under the CPF scheme as opted for by the petitioner himself. Upon joining the respondent No.1, the petitioner was initially covered under the NPL scheme (same as NPS scheme at respondent No. 1) and voluntarily switched over to the CPG scheme which is equivalent to the CPF scheme.

65. Further, it is evident from the letter dated 6th May 2013, that the petitioner had made a special request to be accommodated in the CPG scheme and the same had been sanctioned by the Board of Governors



in their meeting held on 15th February 2013. In view of the notification dated 6th April 2011, the option form of the petitioner dated 30th March 1999, and the letter dated 6th May 2013, it becomes clear that the petitioner himself made requests to switchover from different schemes to the CPF scheme and now wants to switchover to the GPF scheme, which seems like an afterthought.

66. Therefore, this Court is of the view that the case of the petitioner is not covered by the circular issued by the respondent No.3, dated 6th April 2011, since the petitioner exercised his option to switchover himself and hence cannot claim that the option to switchover was never extended to him.”

15. It is also to be noted that the writ petition was filed by the appellant after more than 23 years from 30th March, 1999 when option was given by the appellant for CPF Scheme. Moreover, the writ petition was filed after more than 17 years from 13th October, 2005, when the technical resignation of the appellant was accepted by respondent no.2. Further, the writ petition was filed on behalf of the appellant after more than 15 years from 05th October, 2007 when the respondent no.2/NPL had first rejected the request of the appellant in this regard. Therefore, this Court finds no infirmity with the finding of the learned Single Judge that the appellant has approached the court at a belated stage and no relief can be granted to the appellant to switch over to the GPF Scheme.

16. It is settled law that no one can be permitted to agitate a stale claim after passage of a long duration of time. Thus, Supreme Court in the case of ***Udai Shankar Awasthi Versus State of Uttar Pradesh and Anr.***¹ held as follows:

“43. Approaching the court at a belated stage for a rightful cause, or even for the violation of the fundamental rights, has always been considered as a good ground for its rejection at the threshold. The ground taken by the learned counsel for Respondent 2 that the cause

¹2013 SCC OnLine SC 41



of action arose on 20-10-2009 and 5-11-2009, as the appellants refused to return money and other materials, articles and record, does not have substance worth consideration. In case a representation is made by the person aggrieved and the same is rejected by the competent statutory authority, and such an order is communicated to the person aggrieved, making repeated representations will not enable the party to explain the delay.

44. In Rabindranath Bose v. Union of India [(1970) 1 SCC 84 : AIR 1970 SC 470] in spite of the fact that the Government rejected a representation and communicated such rejection to the applicant therein, his subsequent representations were entertained by the Government. A Constitution Bench of this Court held as under : (SCC p. 97, para 34)

“34. ... He says that the representations were being received by the Government all the time. But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay.”

(emphasis added)

In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396 : 1977 SCC (L&S) 424 : AIR 1976 SC 2617] , State of Orissa v. Arun Kumar Patnaik [(1976) 3 SCC 579 : 1976 SCC (L&S) 468 : AIR 1976 SC 1639] and Swatantar Singh v. State of Haryana [(1997) 4 SCC 14 : 1997 SCC (L&S) 909 : AIR 1997 SC 2105] , a similar view has been reiterated.”

17. In view of the detailed discussion hereinabove, the present appeal is found without any merit. The same is accordingly dismissed.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 28, 2023/au