

(2024) 02 CAT CK 0007

Central Administrative Tribunal - Jabalpur Bench, Jabalpur

Case No: Original Application No. 201, 01190 Of 2022

Chandra Prakash Singhania

APPELLANT

Vs

Union Of India, Through
Secretary, Department Of Atomic
Energy, Anushakti Bhawan, CSM
Marg, Mumbai - 400001 & Ors.

RESPONDENT

Date of Decision: Feb. 6, 2024

Hon'ble Judges: Akhil Kumar Srivastava, Member (J); Kumar Rajesh Chandra, Member A

Bench: Division Bench

Advocate: P J Mehta, Seema Sharma

Final Decision: Dismissed

Judgement

Kumar Rajesh Chandra, Member A

1. The Original application has been filed by the applicant seeking opportunity to exercise his option from CPF to pension scheme.

2. Briefly, the facts of the case of the applicant are that, the applicant joined service in the year 1989 in Technical stream at Raja Ramanna Centre for Advanced Technology (RRCAT), Indore, exercised his option in favour of continuing with CPF on confirmation to the post in 1991. The Department of Pension & Pensioner Welfare (DPPW) vide its circular dated 12.10.1992, gave another option to the Scientific and Technical Personnel of Department of Space, Department of Atomic Energy and Department of Electronics, for change over from CPF scheme to pension. This OM provided that for the S&T personnel of these departments, those, who have not completed 20 years of qualifying service on 01.08.1992, and are still under CPF scheme on that date, will have an option to be exercised at any time but not later than completion of 20 years qualifying service, to switch over from CPF to Pension Scheme. This, circular was revised vide OM dated 23.07.1996 of DPPW, bringing status quo ante as prevailing prior to issuance of these orders in respect of

the pensionary/terminal benefits to S&T personnel in these three departments, who were in service as on 01.08.1992. In order to give another opportunity to S&T personnel of Department of Atomic Energy, who joined service prior to 01/08/1992, and had not exercised option to come over to pension scheme, the department of Atomic Energy, vide OM dated 12.10.2000 gave another option to come over to pension scheme. This option had to be exercised within a period of six months from the date of issue of this OM. The applicant did not use any of these opportunities within the available time limit and submitted that the copy of the said OM was not provided to him. However, he submitted his option for change over to pension scheme in 2002, which were rejected by the respondent vide letter dated 21.12.2003 and RRCAT informed the applicant that he would now be governed by OM dated 17.01.1967 issued by DAE, therefore, no further option is available with him to exercise in favour of pension scheme since he has already exercised his option at the time of confirmation. DAE demanded grant of "one more fresh option" from DP&PW to switch over from CPF Scheme to Pension Scheme Dated on 09.09.2008 and 08.05.2009 for those technical employees who joined service before 01.08.1992 and are still covered under CPF. DP&PW rejected the DAE's demand of grant of "one more fresh option" on 09.07.2009 on the ground that the Department of Expenditure, M/o Finance has not agreed to. Being aggrieved by the same, the applicant along with some technical personnel approached this Bench by filing O.A./886/2009 which was dismissed on 09.05.2012. The Review application was also dismissed. The applicant assailed the orders passed in OA and RA before the High Court by filing WP, which was also dismissed. So, the applicant submitted his representation to the Secretary DP&PW through proper channel on 01.09.2014 which was not forwarded by the DAE. Thereafter, the DAE submitted an exhaustive report containing proposals, in Technical Cadre as deemed to be opted for pension. On 24.08.2016, the Division Bench of High Court of Delhi passed an order in Smt Shashi Kiran & Others Vs. Union of India & Others etc. allowing same issue. In mean time, the DAE's Report was rejected by DP & PW on 25.01.2017 on the ground that Department of Expenditure has not agreed to such proposals. DP & PW clarified on 06.07.2018 that it has not fixed any time limit for switching over to pension Scheme in its OM dated 09.10.2000 (Annexure A/12) and made it clear that DAE can take administrative decision in the matter of relaxation of time limit prescribed by DAE. On 05.03.2020, the RRCAT informed the applicant that being a policy matter, the power for withdrawing the time barred condition of six months as stipulated in DAE OM dated 12.10.2000 is vested with DAE. Thereafter, applicant preferred representation on 04.04.2021 and when DAE did not respond to his representation, the applicant preferred appeal on 20.06.2021. A reminder was also given on 27.01.2022. In the meantime, on 10.05.2022, the Hon'ble Apex Court dismissed the SLP filed by University of Delhi against order of High Court of Delhi in Smt. Shashi Kiran & others versus Union of India & others etc.. The applicant again submitted a representation on 18.05.2022 relying upon the decision given by the Hon'ble Apex court, but the same was rejected by DAE on 19.09.2022.

3. The respondents have filed their reply, wherein it has been submitted by the respondents that the matter regarding extending one more option to switch over to pension scheme to technical employees of the Department who joined service prior to 01.08.1992 and have not completed 20 years of qualifying service as on 23.07.1996 and not exercised option to come over to pension scheme was taken up by respondent no. 1 with the Department of Pension and Pensioners' welfare (respondent no. 2) vide DO dated 09.05.2000 and respondent no. 2 allowed respondent no. 1 to provide one more final option to its technical personnel. Accordingly, respondent no. 1 vide office memorandum dated 12.10.2000 (Annexure A/2) allowed one more final option to all technical personnel of the Department of Atomic Energy who joined service prior to 01.08.1992 and have not completed 20 years of qualifying service and are still in CPF to come over to pension scheme as special case. The option had to be exercised within a period of six months from the date of issue of the OM. The contents of the DAE OM dated 12.10.2000 were given wide publicity by respondents vide Annexure A/12 dated 24.10.2000 by displaying on all notice boards. The applicant did not exercise option to switch over to pension scheme despite the opportunity extended to him. The applicant at the time of his confirmation in the government service exercised his option by opting to remain in CPF. The respondents in their reply further submitted that Government of India in para 5 of the OM dated 09.07.2009 (Annexure A/18) indicated the reasons for not agreeing to provide one more option for the CPF beneficiaries to come over to pension scheme because the fifth Pay Commission did not support the proposal for extending one more option and the Department of Expenditure also concurred with the DP & PW in not permitting another option. As also, the Parliamentary Committee on Petitions had not accepted the demand for granting of another option, it is now an established policy not to grant another option and accepting the proposals would cause spin off effect in other Departments. In view of the aforesaid reasons, there is no scope for allowing one more option to the applicant to come over to pension scheme.

4. The applicant has filed rejoinder to the reply filed by the respondents, wherein he has reiterated the submissions made in the Original Application and further submitted that much time has passed after passing decisions in O.A. No/201/886/2009, WP No. 9146/2012 and OA No. 201/706/2017. The applicant gave tabular details in the rejoinder under the heading "Constructive Res-judicata" in the rejoinder wherein he made it evident that DP&PW has requested DAE to remove six months condition from OM dated 12.10.2000 and allow him to switch over from CPF to pension scheme as applicant has opted option for the same as per DP&PW O.M. dated 09.10.2000. DAE has exclusive power to do so but it is waiting for a Court's decision to allow him such option. Moreover, DAE itself has started looking his matter once again by constituting a committee to examine applicant's case. Therefore, no constructive Res-judicata is applicable in this case.

5. The respondents have filed additional reply to the rejoinder filed by the applicant. In the additional reply they refuted the averments made by the applicant in the rejoinder and further submitted that the tabular details given by the applicant in tabular form under the heading "Constructive Res-judicata" does not bring any substance in the subject matter.

6. This Tribunal has considered the matter and perused the documents annexed herewith the Original Application.

7. It is undisputed that the applicant was appointed as Technician/B (Technical Cadre) on 29.12.1989. There is no dispute to the fact that when the applicant joined his services, the services were confirmed on 09.05.1991. On confirmation he preferred CPF scheme on 30.08.1991. It is further clear from the pleadings that DAE issued impugned OM dated 12.10.2000, Annexure A/2 wherein it has been decided to provide one more option for switching over to GPF/Pension Scheme from CPF to all Technical personnel who joined services prior to 01.08.1992 and have not completed 20 years service and are still in CPF. In the said OM, the option was to be exercised within six months from the date of issuance of OM. It is admitted fact by the applicant that he had not exercised the option within prescribed time limit from the date of the issuance of OM dated 12.10.2000.

8. The applicant has already contested the same issue before this Tribunal by way of filing O.A./886/2009, which was dealt on merit by this Bench and dismissed. The applicant was a party in the O.A./886/2009 as applicant no. 3. Later on, the order of this Bench was affirmed by the Hon'ble High Court of Madhya Pradesh. Now, for the same cause, he is approaching this Tribunal citing the facts that had already been dealt by this Bench. Now, by way of questioning the policy of the respondents under Para 8.1 of the relief clause he is again contesting the same issue.

9. The second ground for challenging the action of the respondent is that the other sister organisations of the respondent department had provided another chance to opt for the said scheme. Regarding this, the respondents had relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh Vide WP No.9146 dated 16.07.2014 whereby Hon'ble High Court has upheld the decision made by this Tribunal in O.A./886/2009, whereby the same question arose regarding seeking the benefit of pension scheme as available to the employer of the sister organisations. Here, Hon'ble High Court has rejected the claim of the petitioner in the said WP and the decision of the Tribunal was upheld wherein the applicant was also a party.

10. The judgment of the Hon'ble Apex Court passed in the matter of University of Delhi vs Shashi Kant Kiran is not applicable in the present case because, there the department is different and it is governed by different rules.

11. Accordingly, in view of the discussions made above, this Original Application is dismissed. No order as to costs.