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

Reserved on: 15<sup>th</sup> October, 2019

Pronounced on: 31<sup>st</sup> October, 2019

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**W.P.(C) 4115/2014**

UNION OF INDIA AND ANR. .... Appellant

Through: Mr. Jasmeet Singh, CGSC with  
Mr. Srivats Kaushal, Advocates.

versus

ASSOCIATION OF THE EMPLOYEES OF INDIAN  
INSTITUTE OF MASS COMMUNICATION (REGD.)  
AND ORS. .... Respondents

Through: Mr. Jayant K. Mehta and Mr.  
Shaurya Kuthiala, Advocates.

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**W.P.(C) 359/2017 AND C.M. APPL. 10453/2019 (delay)**

UNION OF INDIA AND ORS. .... Appellant

Through: Mr. Ruchir Mishra and Mr.  
Mukesh Kumar Tiwari, Advocates.

versus

PRADEEP MATHUR AND ORS. .... Respondents

Through: Mr. Naresh Kaushik, Advocate.

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**W.P.(C) 4599/2019 and C.M. APPL. 20458/2019**

ISHWER SINGH .... Appellant

Through: Mr. Vishwendra Verma, Advocate.

versus

UNION OF INDIA AND ANR. .... Respondents

Through: Mr. Ajay Digpaul and Ms. Arti  
Bansal, Advocates.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE TALWANT SINGH**

## **JUDGMENT**

### **Talwant Singh, J.**

By this common order, we propose to dispose of the above-mentioned three writ petitions.

### **W.P.(C) 4115/2014**

1. The present petition has been filed by the Union of India through the Ministry of Information and Broadcasting (Petitioner No. 1) and Ministry of Finance (Petitioner No. 2) against the Association of Employees of Indian Institute of Mass Communication (contesting Respondent No. 1) and Mr. Birbal, who is working as a *safai karamchari* with the Indian Institute of Mass Communication (Contesting Respondent No. 2). The Indian Institute of Mass Communication (IIMC) has been impleaded as Proforma Respondent/Respondent No. 3.
2. The writ petition is directed against an order dated 2<sup>nd</sup> January, 2014 passed by the Central Administrative Tribunal ('CAT') Principal Bench, New Delhi in T.A. No. 1101/2009, which was filed by Respondent Nos. 1 and 2 against Respondent No. 3 and the two Petitioners mentioned hereinabove. The CAT in the said TA has ordered as under:

“We, in the above facts and circumstances of the case, allow this OA and direct the Respondent No.3 – Ministry of Finance to accord necessary financial sanction for the introduction of the GPF-cum-Pension Scheme to all the employees of the Respondent No. 1 who have been appointed prior to 01.01.2004 as in the case of employees of Autonomous Bodies like National Council of Educational Research & Training, Kendriya Vidyalaya Sangathan, Indian Council of Social Science Research, The National Institute of Health and Family Welfare, ICUs under the UGC etc.,

within a period of 2 months from the date of receipt of a copy of this order. Thereafter, within one month, the Respondent No. 1 in consultation with Respondent No. 2 shall ensure that the benefit of the aforesaid Scheme is made available to all its eligible employees.”

3. The main issue flagged by the present Petitioners is with respect to the applicability of the Central Civil Services (Pension) Rules, 1972 ('Pension Rules') to Autonomous Bodies ('ABs'). The case of the Petitioners is that these ABs are established by the Government to discharge activities related to governmental functions, but they are given the autonomy to do so in accordance with their own set of Memorandum of Associations/Rules, etc. The said ABs are either registered under the Indian Societies Registration Act, 1860 or created by an Act of Parliament. The said ABs have specific objectives and they are governed by their own bye-laws/statutes. The employees of ABs are not Central Government servants.

4. The said ABs have different pension schemes for retired employees. Some of them have opted for GPF-cum-Pension Schemes while others opted for Contributory Provident Fund ('CPF') Schemes. Some ABs even have both such schemes. As a universal rule, employees of these ABs, recruited on or after 1<sup>st</sup> January, 2004, are covered under the New Pension Scheme (NPS). The employees of these ABs cannot claim parity in respect of retirement benefits with Central Government employees who are governed by CCS (Pension) Rules, 1972. In the present case, the employees of IIMC were recruited with the condition of entitlement of benefits of CPF Scheme. So, they cannot claim for shift over from CPF Scheme to GPF-cum-Pension Scheme as a matter of right.

5. It has been further submitted on behalf of the Petitioners that prior to the implementation of the recommendations of 4<sup>th</sup> Central Pay Commission (CPC) in the mid 1980s, CPF was the preferred option due to a higher rate of interest. However, with the implementation of recommendations of the 4<sup>th</sup> Pay Commission, the Pension Scheme became more attractive and a final option was given to Central Government employees to shift from CPF to GPF-cum-Pension Scheme.

6. By an OM dated 1<sup>st</sup> May, 1987 instructions were issued that all Central Government employees who were in service on 1<sup>st</sup> January, 1986 and who are still in service on the date of the OM, would be deemed to have been covered under the New Pension Scheme (NPS), unless they specifically opt for CPF. The recommendations of the Pay Commission do not automatically apply to employees of ABs unless specifically extended. Therefore, the OM did not include employees of Autonomous Bodies like IIMC, which is registered under Indian Societies Registration Act on 2<sup>nd</sup> January, 1966 and its employees are governed by bye-laws of IIMC adopted by its Executive Council on 7<sup>th</sup> October, 1967.

7. The bye-laws no. 53 to 55 provide for retirement and other benefits to the employees of IIMC and under these bye-laws the benefit of CPF was extended to the said employees. By UM No. 840/EV/92 dated 30<sup>th</sup> July, 1992 Ministry of IB was requested to work out a suitable Annuity Scheme through LIC, based on voluntary contribution by employees without any liability on the Government. Time and again demands were made by employees of the ABs to shift to GPF-cum-Pension Scheme from CPF but the Department of Expenditure, Ministry of Finance has not been agreeing to such proposals.

8. By a letter dated 16<sup>th</sup> March, 2000 the Department of Expenditure explained the main reasons for not approving the proposal for introduction of Pension Scheme for the employees of AB on the ground that the cost of introduction of Pension Scheme is much higher than the CPF Scheme; pension is a life-long commitment on the part of the Government; there are difficulties in managing the pension fund through a Trust; in case of winding up of the organisation the entire liability of Pension Fund is to be taken over by the Government and there are recurring financial implications of introduction of the Pension Scheme in ABs.

9. The ABs were advised to continue to follow the CPF Scheme or to work out an Annuity Scheme through LIC. The NPS was introduced for new entrants recruited in Central Government on or after 1<sup>st</sup> January, 2004 and side by side it was decided that all the new entrants in ABs recruited on or after 1<sup>st</sup> January, 2004 would also be governed by the NPS. Regarding employees who joined before 1<sup>st</sup> January, 2004, proposals were received in the Ministry of Finance for shifting from CPF to GPF-cum-Pension Scheme. So, by an OM dated 30<sup>th</sup> June, 2009 it was decided that employees of the ABs recruited even before 1<sup>st</sup> January, 2004 may shift to NPS.

10. As per the Petitioners, the financial implication for agreeing to the Pension Scheme in IIMC was estimated to be Rs.8.50 crores by Ministry of IB in the year 2000. However, there are 238 Abs, out of total of 497 Abs, where the Pension Scheme was not available. The total employee strength of ABs is around 4.35 lacs. Therefore, around 1.60 lakh employees are not governed by the GPF-cum-Pension Scheme and at the

level of pension prevailing in 2013, a corpus of Rs.30.00 lacs per employee would be required, translating to the requirement of Rs.48,000 crores from Government of India for running Pension Schemes for employees of ABs, which would increase substantially in future in view of the revision of pay scales and Dearness Allowance to be granted from time to time.

11. As far as the case in hand is concerned, it has been submitted by the Petitioners that R-1 Association had raised a demand in February, 1985 for introduction of Pension Scheme under CCS (Pension) Rules, 1972. In April, 1987 Petitioner No. 1 Ministry took up this matter with Department of Pension and Pensioners' Welfare. On 2<sup>nd</sup> April, 1987 Petitioner No. 1 inadvertently communicated a no objection for introduction of Pension Scheme in IIMC wrongly mentioning that the NOC of Ministry of Finance (Petitioner No. 2) had been received, whereas only Department of Pension and Pensioners' Welfare was consulted. The said letter is reproduced here under:

“No. 1/6/86 IP

GOVERNMENT OF INDIA MINISTRY OF  
INFORMATION AND BROADCASTING

Dated New Delhi – 1  
2<sup>nd</sup> April, 1987

To

The Registrar  
I.I.M.C.  
D- 18, South Exten., Pt. – II  
New Delhi

Sub: - Introduction of Pension Scheme for the employees of Indian Institute of Mass Communication.

Sir,

I am directed to refer to IIMC's d.o. letter No. 1/MCI dated 25<sup>th</sup> September, 1986 on the subject noted there and to say that the question of introduction of Pension scheme to the employees of IIMC has been considered if consultation with the Finance Ministry which have since resorted to the introduction of Pension Scheme in the IIMC. They have observed that those who are in the Cut-off date i.e. the date on which the Pension Scheme is introduction should be given an action either to opt for the Pension Scheme or to continue with the CPF Scheme. It should also be ensured that those who opt for the Pension Scheme:

- i) have completed their medical examination
- ii) have their character and antecedents verified, and
- iii) have taken bath of Allegiances to the Constitution

2. Subject to the remarks as reproduced above there is the objection to the introduction of Pension Scheme to the employees of the Indian Institute of Mass Communication. This Ministry may however, be kept informed in this regard."

12. However, the Ministry of Finance in its note dated 18<sup>th</sup> September, 1997 has clarified the situation. The matter was taken up with the Ministry of Finance a number of times but it was not agreed to introduction of Pension Scheme. A communication in this regard was received from Ministry of Finance on 12<sup>th</sup> October, 2001 wherein it was conveyed that Ministry of Finance was not in favour of proposal of introduction of Pension Scheme on Government of India pattern for employees of ABs.

13. Respondent Nos. 1 and 2 filed a W.P.(C) No.3306/1995 praying for introduction of Pension Scheme for IIMC employees to which counter

affidavit/reply was filed by Respondent No.3 and the present Petitioners and the rejoinders to the same were filed by the Respondent No. 1 and 2.

14. This matter was transferred to CAT vide order dated 2<sup>nd</sup> March, 2009 and vide order dated 4<sup>th</sup> June, 2010 passed in TA No. 1101/2009, Learned CAT disposed of the said case in favour of Respondent No. 1 and 2 directing the Petitioners to implement the Pension Scheme. On 30<sup>th</sup> September, 2010 extension of time was sought for implementation of order dated 4<sup>th</sup> June, 2010. An application for Review was filed by the Petitioner No. 1 and Respondent No. 3.

15. However, in the mean time contempt proceedings were initiated against the present Petitioners by the contesting Respondents. Vide order dated 22<sup>nd</sup> August, 2012 passed in the RA No. 85/2011 learned Tribunal was pleased to recall the order dated 4<sup>th</sup> June, 2010 and directed fresh adjudication.

16. This order was challenged by the contesting Respondents before this Court by filing W.P.(C) No.955/2013 which was dismissed on 18<sup>th</sup> February, 2013. An application for impleadment of Petitioner No. 2 (Ministry of Finance) was filed on behalf of contesting Respondents which was impeded as Respondent No. 3 before CAT and a short counter reply was filed by present Petitioner No. 2 on 19<sup>th</sup> September, 2013 to which a rejoinder was filed by contesting Respondents.

17. All this culminated in the impugned order dated 2<sup>nd</sup> January, 2014 which has been challenged on the grounds that the said order is illegal; it

has been passed without taking into consideration the Transaction of Business Rules (TOBR); it is contrary to legal position held by Hon'ble Apex Court in ***Rama Rao vs. Government of A.P. & Ors. (1995 Supp. 1 SCC 153)***; the impugned order ignores the admitted position on record that Ministry of Finance had never concurred for introducing CCS pension rules for IIMC employees; the NOC issued by Petitioner No. 1 was without mandatory approval of Petitioner No. 2; it has been wrongly observed that case of the Association was similar to the employees of other ABs; the order would result for granting of benefit to a set of employees while ignoring others and it is likely to cause huge financial burden on the Government Exchequer.

18. The record of CAT was filed and notices were issued to the Respondents. Arguments have been heard.

19. During arguments learned counsel for the Petitioners has relied upon the Government of India Transaction of Business Rules notified on 14<sup>th</sup> January, 1961 as well as on the judgements of the Hon'ble Supreme Court in the matter of ***T.M. Sampath and Ors. vs. Ministry of Water Resources & Ors. 2015 SCC Online Supreme Court 49, Union of India vs. S.L. Verma; (2006) 14 SCALE 56, State of Punjab and Others vs. Amar Nath Goyal and Others (2005) 6 SCC 754, K.S. Krishnaswamy and Others vs. Union of India and Another 2006 AIR SCW 77, M.P. Rural Agriculture Extension Officers Association vs. State of M.P. and Another (2004) 4 SCC 646, B. Rama Rao vs. Govt. Of A.P. and Others 1995 SCC, Supl. (1) 153, Dr. Rajendra Singh vs. Vice Chancellor, University of Allahabad and Others 2007 (68) ALR 431, Videsh***

***Sanchar Nigam Ltd. and Another vs. Ajit Kumar Kar and Others (2008) 11 SCC 591, Transport Manager, Pune Municipal Corporation Transport Undertaking vs. Vasant Gopal Bhagwat (dead) and Others AIR 1998 SC 2789.***

20. On the other hand, learned counsel for contesting Respondents has relied upon the judgement of Hon'ble Supreme Court in ***State of Rajasthan and Others vs Mahendra Nath Sharma 2015 9 SCC 540, Union of India & Ors. and Anr. vs. SL Verma & Ors. 2006 Volume 12 SCC 53*** and ***Union of India & Ors. vs. Amit Mukherjee & Ors.*** of this court in W.P.(C) No.3122/2011 decided on 20<sup>th</sup> May, 2013, which has been upheld by the Hon'ble Supreme Court in SLP No. 8682/2015 decided on 4<sup>th</sup> January, 2018 and RP(C) No. 854/2019 decided on 23<sup>rd</sup> April, 2019.

21. The order of CAT under challenge has rightly noted that in the Memorandum of Association of IIMC, there is a provision for Pension Scheme which reads as under:

“(10) (a) to give pensions, gratuities or charitable aid to the teachers, staff and other employees or ex-employees of the Society or their wives, widows, children or other dependents”.

22. It is also an admitted fact that IIMC (R3) is a registered Society fully funded by the Government of India through Petitioner No.1. Heavy reliance has been placed on letter dated 2<sup>nd</sup> April, 1987 written by the Petitioner No.1 to the Registrar of Respondent No.3 regarding introduction of Pension Scheme for the employees of Respondent No.3 wherein it has been mentioned that the question of introduction of

Pension Scheme was considered in consultation with Finance Ministry which had agreed to introduction of the Pension Scheme in IIMC.

23. The case of the present Petitioners put forward before the CAT was that in this letter dated 2<sup>nd</sup> April, 1987 it was inadvertently mentioned that the Ministry of Finance had agreed for introduction of Pension Scheme for the employees of IIMC. In fact, the consultation was not made with the Ministry of Finance. This fact is clear from the counter affidavit filed on behalf of IIMC, Ministry of Information and Broadcasting and the short affidavit filed by the Ministry of Finance before CAT. The Ministry of Finance was specifically made a necessary party before CAT as it was argued that it was the Ministry of Finance which had raised the objection and had not agreed to introduction of pension scheme.

24. The CAT has also relied upon a judgement of this Court in the matter of *Union of India & Ors. vs. Amit Mukherji & Ors.* (supra) and has extensively quoted from the said judgement as under:

“3. With a view to have uniformity in the pension schemes in various divisions and departments under various ministries, the 4<sup>th</sup> Central Pay Commission recommended a switch over to the pension scheme.

4. It is not in dispute that on May 01, 1987, the Department of Pension and Pensioners Welfare issued a directive to all ministries, *inter alia*, directing: ‘Administrative Ministries administering any of the Contributory Provident Fund Rules, other than Contributory Provident Fund Rules (India) 1962 are also advised to issue similar orders in respect of CPF beneficiaries covered by those Rules in consultation with the Department of Pension and Pensioners Scheme.’

5. The OM dated May 01, 1987 has been interpreted by the Supreme Court in the judgment reported as (2006) 12 SCC 53 *UOI & Anr. Vs. S.L. Verma & Ors.* as under:

“7. The Central Government in our opinion proceeded on a basic misconception. By reason of the said office memorandum dated 1-5-1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme..... Two legal fictions, as noticed herein before, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1-1-1986. In terms of such legal fictions, it will bear repetition to state, Respondents 1 to 13 would be deemed to have switched over to the Pension Scheme, which a fortiori would mean that they are no longer remained in the CPF Scheme.”

6. We concur with the view taken by the Tribunal as per the impugned decision dated April 12, 2010, for firstly, since the writ petitioners could furnish no valid reason as to why permission was accorded to the 12 Autonomous Bodies, names whereof have been tabulated in paragraph 3 of the decision by the Tribunal, to switch over to the pension scheme; approval was not granted to DUAC which had also passed a similar resolution. Secondly, for the reason the OM dated May 01, 1987 has already been constructed by the Supreme Court as creating a legal fiction i.e. an automatic switch over to the pension scheme unless the employee opted out.

7. Before concluding we may note that the NCR Planning Board is under the same nodal ministry i.e. Ministry of Urban Development which is the nodal ministry of DUAC and we find that the decision taken by the management of the NCR Planning Board to switch over to the pension scheme has been accorded approval by the cadre controlling

nodal ministry and its employees are receiving pension. We would be failing not to further highlight that in the tabular form chart prepared by the Tribunal in paragraph 3 of the opinion, the number of employees working in the 12 Autonomous Institutions where the Central Government has permitted the management to shift over to the pension scheme ranges between a minimum of 117 to a maximum of 463, except DTC where the number is in thousands; and yet to a small body employing only 26 personnel (where the financial impact would be minimal) the benefit is denied. Is it that the Central Government follows the principle: '*Might be Right*'?

8. The writ petition is dismissed.

9. No costs.”

25. It is pertinent to mention here that Union of India had preferred an SLP against the said judgement of this Court and the said SLP was dismissed on 4<sup>th</sup> January, 2018 vide following order:

“Heard learned counsel for the parties.

We do not find any ground to interfere with the impugned order. The special leave petition is, accordingly, dismissed. Pending application(s), if any, shall also stand disposed of.”

26. The review petition filed by Union of India was also dismissed vide following order on 23-04-2019:

“There is delay of 303 days in preferring the Review Petition for which no satisfactory explanation is given. Even then, we have considered the matter on merits.

26 persons, most of whom were group C and D employees working with Delhi Urban Arts Commission made a request to the Central Government to accord them similar treatment as was given to employees of certain other Bodies/Subordinate offices under the Central Government. However, their request to switch over from CPF Scheme to

Pension Scheme was rejected by the Central Government. Challenge to that decision was accepted by the Tribunal and the decision so rendered was affirmed by the High Court. Special leave petition arising therefrom was dismissed by this Court.

We have gone through the contents of the Review Petition and do not find any error apparent on record to justify interference in review jurisdiction.

This Review Petition is, therefore, dismissed on the grounds of delay as well as on merits.”

27. So, the judgement of this Court in the matter of *Union of India vs. Amit Mukherji* (supra) has attained finality. In the said judgement, employees of Delhi Urban Art Commission were ordered to be covered under the CCS Pension Rules. When this decision was challenged before Hon’ble Supreme Court, then it was heard and the judgement was passed by a Division Bench comprising of two Hon’ble Judges. On the contrary, in the matter of *T.M. Sampath vs. Ministry of Water Resources* (supra), the judgement was passed by Bench of 3 Judges of Hon’ble Supreme Court on 20<sup>th</sup> January, 2015 but the judgement of the 2 Judges Bench of the Supreme Court in *Union of India vs. Amit Mukherjee* (supra) nowhere mentions that any reference was made to the said decision of 3 Judges Bench of Supreme Court of India, which was passed about three years prior to the said judgement in the matter of *Amit Mukherjee* (supra).

28. In *T.M. Sampath’s* matter, the question before Hon’ble Supreme Court was almost the same as raised in the petition in hand. The facts of the said case show that the Appellants therein were employees of National Water Development Agency (NWDA), which was registered as

a society in July, 1982 under Societies Registration Act. The said society is under the administrative and financial control of Ministry of Water Resources and is fully funded by Government of India. It has framed rules and regulations for its smooth functioning in which it has been mentioned that whatever emoluments have been prescribed for Government servants, the same would apply to the employees of NWDA, subject to modification by the Governing Body concerning service conditions. The emoluments structure for all employees would be adopted by NWDA with the approval of Ministry of Finance. NWDA had implemented all the recommendations of 4<sup>th</sup> Pay Commission and as per the Appellants, in view of the implementation of recommendations of 4<sup>th</sup> Pay Commission, they are also deemed to have been governed under the pension scheme formulated by Government of India under the 1972 Rules.

29. The further case of the Appellants in **T. M. Sampat's** matter was that OM dated 1<sup>st</sup> May, 1987 was scrutinised by the Supreme Court in the case of **S.L. Verma** (supra) and their case is fully covered under the said judgment. The Petitioner claimed that they were covered under Clause 6.1 of the OM read with Clause 7.2 and the OM is applicable to them and they deemed to be covered under the pension scheme of the Central Government. As per the Appellants in the said case, the Government had acted arbitrarily by rejecting the claim of the Appellants as they were not treated at par with their similar counterparts in Central Government as NWDA falls within the meaning of 'State' as defined in Article 12 of the Constitution and when all the recommendations of 4<sup>th</sup> CPC were implemented, then there was no occasion for not changing over the CPF

beneficiaries to the pension scheme. As per them, the letter of Department of Expenditure dated 16<sup>th</sup> March, 2000 only provided advice that introduction of pension scheme in ABs should not be made in a routine manner and the Governing Body of NWDA was bound by legal fiction to extend the pension scheme to its employees and the said legal fiction was created by OM dated 1<sup>st</sup> May, 1987; acceptance of 4<sup>th</sup> CPC recommendations and the general financial rules that where ABs were receiving more than 50% of their recurring expenses by way of grant-in-aid from Central Government, then their employees should be treated at par with their counterparts in Central Government. The Appellants claimed that they were performing duties in the interest of State and they should be provided conditions and benefits of service on the same lines as Central Government employees and denial of retirement benefits is denial of livelihood after superannuation which is violative of Article 21 of The Constitution.

30. On the other hand, the Union of India had submitted before the Hon'ble Supreme Court that there were two material facts which initially distinguished *S.L.Verma's* case from the present case. NWDA Governing Body had framed its own CPF Rules and the contributions were made to the CPF scheme. It was submitted that all orders of the Central Government were not automatically made applicable to employees of NWDA. After acceptance of 4<sup>th</sup> Pay Commission recommendations, the OM was issued extending the benefits to the employees governed by CPF scheme and the CPF Rules were framed in consultation with Nodal Ministry. Moreover, without any specific approval of Ministry of Finance, Department of Pension and Pensioners' Welfare and Ministry of

Water Resources, the NWDA cannot introduce the pension scheme on the lines of CCS (Pension) Rules. The Petitioners were governed under Clause 7.2 of the OM and the Ministry of Finance as well as Department of Pension and Pensioners' Welfare did not agree to extend the pension scheme to the employees of NWDA. Moreover, the changeover to pension scheme was not automatic as NWDA had its own CPF Rules and since ABs have their own rules and regulations, so their employees cannot be equated at par with their counterparts working in Government Departments and other ABs as contended in ***Union of India vs. Dr. Jai Dev Vig*** (Civil Appeal No.4247-4248 of 2001 decided on 30-10-2007 by Supreme Court).

31. The Hon'ble Supreme Court after considering the facts and circumstances and the submissions made by the contesting parties, concluded that NWDA had framed its own regulations namely the CPF Rules, 1982 and the said Rules were duly approved by the Governing Body. As NWDA is an Autonomous Body under the Ministry of Water Resources and it has framed its own bye-laws governing the employees so the Court must adopt an attitude of total non-interference or minimum interference in the matter of interpretation of Rules framed by autonomous institutions as was held in the matter of ***Chairman and M.D Kerala SRTC vs. K.O. Varghese (2007) 8 SCC 231***, hence, the Hon'ble Supreme Court reached to a conclusion that as the Appellants were governed by the CPF Rules, 1982, so the OM applicable to Central Government employees regarding GPF-cum-Pension Scheme is not applicable to them.

32. On the issue of parity between the employees of NWDA and Central Government employees, it was held that even if it is presumed that 1982 CPF Rules were not in existence but the OM dated 1<sup>st</sup> May, 1987 cannot be made applicable on the principle of parity to the employees of NWDA as it is not an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government. So, only on the basis of receipt of funding from the Central Government, employees of NWDA cannot be treated at par with their counterparts in Central Government.

33. The Hon'ble Supreme Court has gone to the extent that if it is presumed that NWDA is a State under Article 12 of the Constitution, even then the Appellants could not prove that they are at par with their counterparts with whom they claim parity and the claim of equality can be claimed when there is discrimination by the State between the two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between the acts of two different authorities functioning as State under Article 12. Even on this ground, employees of NWDA cannot claim parity with the employees of Central Government. So, it was held that OM dated 1<sup>st</sup> May, 1987 was not applicable to the employees of NWDA and they have failed to establish that they are Central Government employees or they are entitled to claim parity with other Central Government employees regarding extension of GPF-cum-Pension Scheme.

34. The ratio of the decision in **T.M. Sampath's** case is fully applicable to the case in hand. The members of the Respondent No. 1 Association are

claiming parity with the Central Government employees on the ground that the Respondent No.3 organisation is fully funded by the Central Government. The said ground has been negated by the Hon'ble Supreme Court to claim parity. The Ministry of Finance has reiterated in its counter affidavit filed before CAT that it had never agreed for introduction of the pension scheme in IIMC on the lines of the pension being provided to the Central Government employees. So, this Court cannot force the Petitioner No.2 to give its concurrence for introduction of the pension scheme under CCS Pension Rules for the employees of Respondent No. 3 organisation.

35. The Respondent No. 3 had its own CPF based scheme for its employees. So, the benefit granted to Central Government employees for shifting from CPF to the pension scheme cannot be extended automatically to the employees of Respondent No.3 organisation on the basis of OM dated 1<sup>st</sup> May, 1987 as Clause 7.2 of the said OM makes it very clear that the Administrative Ministries were advised to issue similar orders but no such order was issued by Petitioner No. 1, i.e. the Controlling Ministry of IIMC after consultation with the Petitioner No. 2. So, the benefit of the CCS (Pension) Rules, 1972 cannot be extended to the employees of Respondent No. 3.

36. It is to be noted that the New Pension Scheme, 2004 has been made applicable across the board to all the employees of Central Government and the ABs with effect from 1<sup>st</sup> January, 2004. Moreover, option was given to the employees of ABs, who were employed prior to 1<sup>st</sup> January, 2004, to either opt for the New Pension Scheme or to continue with the

old CPF Scheme and the employees who were interested in getting pension, they had the option to become contributory to the New Pension Scheme, 2004 irrespective of their dates of appointment.

37. The Government of India Transaction of Business Rules issued on 14<sup>th</sup> January, 1961 provides as under:

“4. Inter-Departmental Consultations:

(1) When the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet.

Explanation- Every case in which a decision, if taken in one Department, is likely to affect the transaction of business allotted to another department, shall be deemed to be a case the subject of which concerns more than one department.

(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may-

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession;

(c) relate to the number or grade or posts, or to the strength of a service, or to the pay or allowances of Government

servants or to any other conditions of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not;

Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Ministry of Finance without the previous concurrence of the Department of Personnel and Training.”

38. So, it is clear that without the concurrence of Petitioner No. 2/ Ministry of Finance, the Pension Scheme, which has got financial implications, cannot be introduced either in any Government Department or any AB and Petitioner No. 2/Ministry of Finance has time and again reiterated that no sanction was ever granted to IIMC to start Pension Scheme similar to Central Government.

39. In view of the above, the writ petition is allowed and impugned order dated 2<sup>nd</sup> January, 2014 passed by CAT in TA No. 1101/2009 is hereby set aside.

#### **W.P. (C) 359/2017 & C.M. APPL. No.10453/2019 (delay)**

40. In the second writ petition, W.P.(C) No.359/2017, the issue is whether employees of Central Pollution Control Board (CPCB) are to be considered as Central Government employees and as such they are to be governed by CCS (Pension) Rules, 1972. The Petitioners here are the Ministry of Environment and Forest (P1), Ministry of Personnel and Public Grievances and Pensions (P2), Ministry of Finance (P3) and CPCB (P4).

41. The Respondents herein are 261 employees of CPCB. The facts are that the present Respondents had filed OA No. 2805/2012 against the present Petitioners before the CAT seeking the relief that the present Respondents are entitled to the Pension Scheme as recommended by 4<sup>th</sup> Pay Commission with interest and all consequential benefits with effect from 1995. Petitioner No. 4, CPCB was constituted in 1994 as a statutory body and the present Respondents claimed before CAT that they are at par with the Central Government employees and as such in view of OM dated 1<sup>st</sup> May, 1987, they are automatically covered under GPF-cum-Pension Scheme in place of the Contributory Provident Fund (CPF). In this case also there was no concurrence given by the Ministry of Finance.

42. The CAT has heavily relied upon its Co-ordinate Bench order in TA No. 1101/2009 in respect of employees of Indian Institute of Mass Communication (IIMC) and in para 4.5 of the impugned order, it is mentioned that the judgement of Co-ordinate Bench in TA No. 1101/2009 squarely governs the case in hand and ultimately CAT came to conclusion that the Applicants before it (Respondents herein) will be entitled to the same relief as has been granted to the Applicants of TA No. 1101/2009.

43. As mentioned in the discussion herein above, in view of this Court the employees of ABs are not at par with the employees of Central Government and OM dated 1<sup>st</sup> May, 1987 does not automatically cover employees of ABs and where there is no concurrence of the Ministry of Finance, in that case the benefit of the GPF-cum-Pension Scheme cannot be extended to the employees of ABs in lieu of the CPF Scheme already prevailing there. Since, the judgement of CAT in TA No. 1101/2009 has

been set aside by giving detailed reasons, the above judgement in OA No. 2805/2012 titled *Shri Pradeep Mathur and Ors. vs. CPCB and Ors.* is also liable to be set aside as this judgement was passed heavily relying upon the judgement in TA No. 1101/2009.

44. Hence, Writ Petition (Civil) No. 359/2017 is allowed and the judgement dated 24<sup>th</sup> February, 2014 in OA No. 2805/2012 is hereby set aside. Accordingly, the pending application stands disposed of.

**W.P. (C) 4599/2019 & C.M. APPL. No.20458/2019**

45. The Petitioner here has challenged an order dated 31<sup>st</sup> January, 2019 passed by the CAT in review application No.220/2015 along-with judgment dated 13<sup>th</sup> April, 2012 passed in OA No. 3863/2011.

46. In OA No.3863/2011 the Petitioner had claimed that he had joined CPCB as Assistant Law Officer on 1<sup>st</sup> November, 1982 and later on he was promoted as Law Officer on 28<sup>th</sup> March, 1989 and again promoted as Senior Law Officer on 1<sup>st</sup> November, 1997 and with effect from 5<sup>th</sup> September, 2000 he was attached with Ministry of Environment and Forest (MEF). Later on, he was promoted to the post of Additional Director (Law) in CPCB but he continued to work on attachment with MEF till his date of superannuation. Although there was a vacant post of Joint Director (Legal) in MEF and Applicant was the most suitable candidate but this post was not filled up. There was another proposal to upgrade the post of Joint Director (Legal) to the post of Director (Legal) and the Applicant submitted his request in May, 2010 for absorption in MEF but no response was made by the MEF.

47. On these bases, he approached the CAT and had made 3 prayers in OA 3863/2011:

“8.1 To pass an order directing the Ministry of Environment & Forests to consider the case of the applicant for absorption in the Ministry of newly created post of Director (Legal) in the pay-scale of 37400-67000+ grade pay in PV – IV in the interest of justice so that his more than 11 years of dedicated service in the Ministry does not go unaccounted.

8.2 To pass an order directing the Ministry of Environment & Forests to consider the case of the applicant for grant of pensionary and medical benefits as admissible to the employees of the Ministry of Environment & Forests under the CGHS Scheme in view of his attachment with the Ministry and continuing in the service for more than 11 years and is still working in the Ministry or in the alternative direct the extension of CGHS benefits to the CPCB as requested by them also and therefore grant the said benefits to the applicant even though he may be considered as a part of CPCB.

8.3 In the alternative to pass an order directing the Ministry of Environment & Forests to consider the case of the applicant for grant of pensioner and medical benefits by the CPCB in case the applicant is not absorbed in the Ministry and the applicant in the circumstances superannuates/retires from the service of the CPCB, although the applicant is still attached with the Ministry and has not been repatriated.”

48. After considering the rival contentions of the Applicant and the Respondents CAT partly allowed his petition and directed as under:

“13. In view of the above facts and circumstances of the case, and for the reasons given in the preceding paragraphs, we are of the considered opinion that the applicant though has failed in respect of 1<sup>st</sup> and 2<sup>nd</sup> issues to convince us for our interference, he succeeds in respect of the third relief only which relates to the extension of NPS benefits to him.

14. We, therefore, direct the parties in following terms:

- (i) The applicant is entitled to the NPS benefits as per the terms and conditions and features of NPS applicable to the CPCB;
- (ii) The applicant has to surrender the cheque received on account of CPF to the 2<sup>nd</sup> respondent within a period of four weeks from the date of receipt of a certified copy of this order and
- (iii) The second respondent is directed to work out the amount due to and from the applicant for extension of the benefits under the NPS and make payments to the applicant as admissible under NPS within a period of three months from today. It goes without saying that the applicant will cooperate with the 2<sup>nd</sup> respondent and provide information and documents as required under the NPS. Let the orders and directions, as ordained above, be completed within a period of four months from today”.

49. However, feeling not satisfied with the said order, the Applicant filed a review application RA No.220/2015 before CAT on the ground that his principal contention of being entitled to be treated as part of MEF or extension of benefits at par with employees of MEF was not considered. After hearing both the parties, the CAT has passed the following order in review petition:

“5. Review is not a substitute for appeal. The applicant is not able to demonstrate as to what material fact or question or law missed the consideration of the Tribunal, when it decided the OA. A perusal of the order in the OA discloses that every contention of the applicant was taken note of, and

the discussion was undertaken with reference to three principal issues, namely, - (i) absorption against the post of Director (Law); (ii) extension of pensionary and medical benefits admissible to the employees of the first respondent; and (iii) extension of new pension scheme, in case the pension is not allowed in the second respondent organization. Not only these issues, but certain subsidiary issues were also discussed at length with reference to relevant provisions and facts.

6. We do not find any basis to review the order in the OA. The review application is accordingly dismissed.”

50. It can be seen from the above order that CAT was of the opinion that every contention raised by the Applicant was taken care of and all the three issues raised by the Petitioner were duly discussed and apart from that certain other allied issues were also discussed. Hence, they did not find any basis to review the order in OA and the review application was dismissed.

51. Now, before this Court by way of writ petition, same contentions have been raised that although the Petitioner was initially appointed in CPCB but from 5<sup>th</sup> September, 2000 onwards he was working with MEF and he had made representation for his absorption but no decision was taken on the same inspite of Petitioner devoting more than 11 years as part of MEF. So, he should be granted pension on the same terms as being granted to his counterparts working in MEF. Moreover, CPCB is the statutory body under MEF and it never had any objection for absorption of Petitioner in MEF. He relied on a decision of CAT in OA No.2805/2012 titled ***Pradeep Mishra & Ors. vs. CPCB*** mentioning that in the said OA, directions were issued to the Respondents to grant GPF-cum-Pension Scheme to all employees of CPCB but while deciding the

said matter, parity was erroneously not granted to the Petitioner and he was directed to be covered under NPS and not under the Pension Scheme of the Central Government. He felt aggrieved by the order dated 31<sup>st</sup> January, 2019 in RA No. 220/2015, which was dismissed and prior to that the judgment dated 13<sup>th</sup> April, 2012 in which it was directed that he will be covered under the New Pension Scheme.

52. The main ground raised in the present petition is that in view of the decision in ***Pradeep Mishra & Ors. vs. CPCB***, OA No. 2805/2012 the employees of CPCB were ordered to be granted GPF-cum-Pension Scheme but the present Petitioner was left out.

53. The final order of CAT in OA No. 2805/2012 has been set-aside above. Hence, there is no ground for the present Petitioner to seek alleged parity with the remaining employees of CPCB which are now to be governed by CPF/NPS. The CAT has extensively dealt with all the pleas raised by the Petitioner regarding his absorption in MEF or grant of pension on the lines of Gratuity-cum-Pension Scheme which was extended to the employees of MEF keeping in view that the Petitioner had served in MEF from 2000 till his superannuation in 2011. The CAT has rightly reached to the conclusion that Petitioner continued to be an employee of CPCB which is an AB, although his services were utilized in MEF and he is to be governed by the same Rules by which employees of CPCB are being governed and he is neither entitled to absorption in MEF nor to the old Pension Scheme. The benefit of New Pension Scheme was extended to the Petitioner while partly allowing his OA by the CAT. There is no ground to interfere in the final order in OA No. 3863/2011

dated 13<sup>th</sup> April, 2012 and RA No. 220/2015 dated 31<sup>st</sup> January, 2019 passed by CAT.

54. The writ petition bearing W.P. (C) No.4599 of 2019 is accordingly dismissed and the pending application stands disposed of.

**TALWANT SINGH, J.**

**S. MURALIDHAR, J.**

**OCTOBER 31, 2019**

*pa*

