



2026:DHC:2877-DB



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 19.01.2026

%

Judgment delivered on: 07.04.2026

+

LPA 391/2021 & CM APPL. 37850/2021

EXPORT INSPECTION COUNCIL

.....Appellant

Through: Mr. L.R. Khatana, Advocate.

versus

DEEPAK SHEKHAR & ANR.

.....Respondents

Through: Mr. Kripa Shankar Prasad and Mohd. Ainal Ansari, Mr. M. K. Goyal, Mr. Harsh Jain, Advs. for R-1 and 3. Mr. Sushil Kr. Pandey, S.P.C. for R-2/UOI.

+

LPA 392/2021 & CM APPL. 37893/2021

EXPORT INSPECTION COUNCIL

.....Appellant

Through: Mr. Sanjay R. Hegde, Sr. Adv. with Mr. L. R. Khatana, Mr. Ankit Tiwari, Mr. Ashish Kumar, Advs.

versus

RAJIV RAIZADA & ANR.

.....Respondents

Through: Mr. Kripa Shankar Prasad and Mohd. Ainal Ansari, Mr. M. K. Goyal, Mr. Harsh Jain, Advs.

+

LPA 396/2021 & CM APPL. 37893/2021

EXPORT INSPECTION COUNCIL

.....Appellant

Through: Mr. Sanjay R. Hegde, Sr. Adv. with Mr. L. R. Khatana, Mr. Ankit Tiwari, Mr. Ashish Kumar, Advs.



2026:DHC:2877-DB



versus

ANAND KISHORE & ANR.

.....Respondents

Through: Mr. Kripa Shankar Prasad, Mohd. A. Ansari, Mr. Manoj Kr. Goyal, Mr. Harsh Jain, Advs. for R-1.
Mr. Sushil Kr. Pandey, S.P.C. for R-2/UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. These three intra-Court appeals challenge the judgment and order dated 05.07.2021, passed by the learned Single Judge whereby W.P.(C) 6747/2014, W.P.(C) 8601/2010 & W.P.(C) 3426/2012 have been allowed and it has been held that the employees of the Export Inspection Council – appellant, who had instituted the proceedings of the writ petitions would be deemed to have switched over to the pension scheme and as such are entitled to the benefits thereunder on the date of their retirement. The learned Single Judge has also directed that the employees shall refund the employer's contribution to Contributory Provident Fund (hereinafter referred to as 'CPF') received by them with interest @ 8% per annum and the appellant shall compute the pension and arrears, if any, after making adjustment which shall be paid to the employees thereafter, but without any interest.

2. Since, all the three appeals challenge the same judgment and order passed by the learned Single Judge and raise similar questions of law, they



have been heard together and are being decided by the common judgment which follows:

3. The issue in these appeals centers around a circular dated 02.07.1987 issued by the Export Inspection Council (hereinafter referred to as the ‘**Council**’) which has been established under Section 3 of Export (Quality Control and Inspection) Act, 1963 (hereinafter referred to as ‘**the Act**’). The said circular dated 02.07.1987 refers to a decision of Government of India while accepting the recommendations of the Fourth Central Pay Commission on Pension, whereby it was decided that employees of the Central Government who were still governed by the CPF scheme shall be given option to continue to remain in the said scheme vide circular dated 01.05.1987. The circular further mentions that the Council, with the approval of the Ministry, has decided to extend the said benefit on the same terms and conditions as is stipulated by the Government of India to the employees who are governed by the CPF Scheme of the Export Inspection Council/ Agencies.

4. The said circular dated 02.07.1987 embodies salient features of the scheme and provides that all those who are governed by the CPF Scheme, who were in service as on 01.01.1986 and who were still in service on the date of issue of the circular i.e. 02.07.1987, would be deemed to have come over to Export Inspection Council, Pension and General Provident Rules, 1981 as notified by the Ministry on 24.10.1981. It also mentions that such employees would have an option to continue to remain under the CPF Scheme if they so desired. It further provides that the option would have to be exercised and conveyed to the concerned head of the office by



31.10.1987 in the format which formed part of the circular. The said circular also stipulates that if the employees wish to continue under CPF Scheme and if no option is received by the head of the office by 31.10.1987, the employees would be deemed to have come over to the pension scheme. Clauses 2(a) and 2(b) of the circular dated 02.07.1987 are quoted hereunder:

“2. With the approval of the Ministry it has been decided to extend, with immediate effect, the said benefit on same terms and conditions as stipulated by the Govt. to the employees who are governed by the CPF Scheme of the Export Inspection Council/ Agencies. The salient features of the scheme are as under:-

(a) All those who are governed by the CPF scheme who were in service as on 1.1.1986 and who are still in service on the date of issue of this circular shall be deemed to have come over to Export Inspection Council Pension and General Provident Fund Rules 1981 as notified by the Ministry vide S.O. No.2922 dated 24.10.1981.

(b) The employees of the category mentioned above will, however, have an option to continue to remain under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned head of office latest by 31 Oct. 1987 in the form enclosed to the circular, if the employees wish to continue under the CPF Scheme If no option is received by the head of office by 31.10.1987 the employees will be deemed to have come over to the Pension Scheme.

(c)

x

x

x”

5. The question for consideration which had arisen before the learned Single Judge and that needs to be considered in these appeals as well, is that in case the employees of the Council, in terms of the circular dated 02.07.1987 did not exercise and convey their option to continue to be governed by the CPF Scheme of the Council, will they be deemed to have come over to the Pension Scheme?



6. Such stipulations are made in Clauses 2(a) and 2(b) of the circular dated 02.07.1987, a perusal of which makes it unambiguously clear that those employees who were governed by the CPF Scheme and were in service as on 01.01.1986 and also were still in service on the date of issue of the circular i.e. 02.07.1987, shall be deemed to have come over to the Export Inspection Council, Pension and General Provident Rules, 1981.

7. Clause 2(b) of the said circular further stipulates that employees willing to remain to be governed by the CPF Scheme were to give their option for their continued coverage under the CPF Scheme and, in case, the employee concerned did not give his option to be covered under the CPF Scheme by 31.10.1987, such employee will be deemed to have come over to the Pension Scheme. Accordingly, in view of the clear and explicit stipulation in Clauses 2(a) and 2(b) of the circular dated 02.07.1987, the coverage of the Pension and GPF Scheme was automatic which was dependent only on the employee giving an option to continue to be covered under the CPF Scheme. In other words, in a situation where the employee concerned did not exercise and convey his option by 31.10.19687 to be continued to be covered under the CPF Scheme, he was not required to give any option for being covered under the Export Inspection Council, Pension and General Provident Rules. The deeming clause contained in clauses 2(a) and 2(b) of the circular dated 02.07.1987 is unequivocal and does not leave any ambiguity.

8. The respondents in these appeals (employees) were in service on 01.01.1986 and were also in service of the Council on the date of issuance of the said circular i.e. 02.07.1987. However, since the appellant – Council



2026:DHC:2877-DB



was not treating them to be covered under the Pension and General Provident Fund Scheme, they represented their cause to the authorities of the Council.

9. The representation made by the respondent in LPA 392/2021, namely Rajiv Raizada was rejected by the Council vide order dated 07.11.2013. If we peruse the order rejecting the claim of Rajiv Raizada, what we find is that the reason given by the Council for not allowing him to be covered under the GPF and Pension Scheme is that he had given his option on 24.12.1983 and again on 24.03.1986 in favour of being covered by CPF Scheme and thereafter he continued to be covered under the CPF Scheme till the date of decision i.e. 07.11.2013.

10. In our considered opinion, such a reason given by the Council for not allowing Shri Rajiv Raizada to be covered under the Pension and GPF Scheme is untenable for the reason that on issuance of the circular dated 02.07.1987, he would be deemed to have come over to the Pension and GPF Pension Scheme as, admittedly, by the cut of date i.e. 31.10.1987, he did not exercise and convey his option to continue to be covered under the CPF Scheme. As a matter of fact, the circular dated 02.07.1987 gave option to all the employees who were in service of the Council as on 01.01.1986 and were also continuing on the date of issue of the circular i.e. 02.07.1987. Thus, since Shri Rajiv Raizada had not exercised his option by 31.10.1987 to be governed under the CPF Scheme, he would be deemed to have come over to the Pension and GPF Scheme of the Council.



11. Any option, given prior to the issuance of the circular dated 02.07.1987, would lose its significance and meaning for the reason that the circular dated 02.07.1987 covered all those employees who were in service on 01.01.1986 and were still in service on the date of issuance of the circular dated 02.07.1987. The option to remain covered under the CPF Scheme was to be exercised and conveyed by all such employees by 31.10.1987 and in case such employees, who were in service as on 01.01.1986 and were also in service of the Council on 02.07.1987, did not opt to be governed by CPF Scheme, they will be deemed to have come over to the Pension and GPF Scheme of the Council.

12. The circular dated 02.07.1987, in fact, does not differentiate between employees who had earlier given option to be covered by the CPF Scheme and those who had not given such option, prior to 02.07.1987. The conditions for application of the circular dated 02.07.1987 were (1) the employee was covered by CPF Scheme prior to 02.07.1987, (2) he was in service on 01.01.1986 and (3) he was still in service on the date of issuance of the circular i.e. 02.07.1987.

13. There is no dispute that Shri Rajiv Raizada and other employees who had instituted the underlying writ petitions were governed by CPF Scheme prior to issuance of the circular dated 02.07.1987 and were in service as on 01.01.1986 and were also in service of the Council on the date of issue of the circular dated 02.07.1987. Thus, merely because prior to 02.07.1987, an employee had given an option to be governed under the CPF Scheme, he will not be debarred from claiming that he shall be covered under the GPF and Pension Scheme if he had not given his option conveying that he shall



continue to be governed under the CPF Scheme, by 31.10.1987. In the aforesaid view of the matter, a bare perusal of the provisions of the circular dated 02.07.1987 and the facts of the instant case, clearly establish that all the employees who had instituted the underlying writ petitions were governed by the circular dated 02.07.1987 and none of them had exercised and conveyed their option to be governed under the CPF Scheme by 31.10.1987 and, therefore, any other view taken in respect of the claim of these employees, in our considered opinion, runs in complete derogation of the circular dated 02.07.1987.

14. So far as the respondent in LPA 391/2021 (the petitioner in W.P.(C.) No. 3426/2012) – Deepak Shekhar is concerned, the representation made by him claiming that he shall be covered under the GPF and Pension Scheme was rejected by the authorities of the Council vide order dated 30.03.2012, however, the said order does not disclose any reason for denying him the said benefit; rather it only conveys that decision has been taken to deny the said benefit. The facts in relation to Deepak Shekhar are also not in dispute. He was covered by the circular dated 02.07.1987 and had not given his option to be continued under the CPF Scheme by 31.10.1987 and, therefore, for all these reasons, he shall also be deemed to have come over to the GPF and Pension Scheme of the Council.

15. Similarly, the respondent in LPA 396/2021 (petitioner in W.P.(C.) No. 8601/2010) – Anand Kishore, is also entitled to the benefit of being included in and covered by the GPF and Pension Scheme of the Council. His representation claiming such benefit was rejected by the authorities of the Council vide order dated 24.06.2010 wherein it has been stated that in



2026:DHC:2877-DB



terms of the circular dated 02.07.1987, the option to move over to GPF was to be exercised by those employees of the Council who had joined service prior to 24.10.1981 and since Shri Kishore never exercised such option, he will be continued to remain under the purview of the CPF Scheme. Such a reason, in our opinion, is absolutely misconceived as it is based on complete misreading of the circular dated 02.07.1987 inasmuch as, the said circular never required the employees to exercise and convey option for moving to GPF and Pension Scheme. All that was required under the said circular dated 02.07.1987 was that those employees who still wanted to continue to be governed under the CPF Scheme, were to give their options and convey the same to the authorities. The circular dated 02.07.1987 does not stipulate any requirement of exercising and conveying option for moving over to GPF and Pension Scheme from CPF Scheme. The option required was only to be given in case the employee concerned intended to continue to be governed by the CPF Scheme. Thus, the reason given in the rejection letter dated 24.07.2010 in respect of Shri Anand Kishore is absolutely untenable.

16. We may also note, at this juncture, that the appellant – Council had issued a circular dated 08.02.1989 with the approval of the Ministry of Commerce, and conveyed therein that officers and employees of the Council, if they so desire may opt for the pension scheme and such option should reach the Head of the Export Agency by 31.03.1989. It further stipulated that no further opportunity will be extended to the employees in future for this purpose and, consequently, they shall be governed by the CPF Scheme.



17. So far as the aforesaid circular is concerned, the same cannot be read in isolation for the simple reason that the said circular dated 08.02.1989 does not supersede the earlier circular dated 02.07.1987. In terms of the circular dated 02.07.1987, if an employee concerned who was covered by the said circular and did not exercise and convey his option by 31.10.1987 to be covered under the CPF Scheme, in our opinion, shall be deemed to have switched over to the GPF and Pension Scheme of the Council. The circular dated 08.02.1989, as already noted above, nowhere states that it was issued in supersession of the circular dated 02.07.1987. This circular, in our opinion, would apply to those who had opted for CPF Scheme pursuant to the circular dated 02.07.1987 and, thereafter, intended to switch over to the GPF and Pension Scheme. No defence, thus, is available to the appellant to deny the employees of the Council of the benefit of the circular dated 02.07.1987 on the basis of the subsequent circular dated 08.02.1989.

18. The learned Single Judge has discussed the respective cases of the parties and has also considered the provisions of the circular dated 02.07.1987 and has held that the circular dated 02.07.1987 had deeming effect that in the eventuality an express option is not exercised by an employee for his continuance in the CPF Scheme, then he is deemed to have switched over to the Pension Scheme. The learned Single Judge has also returned a finding that nothing was placed on record to show that the employees who had filed the underlying writ petitions had ever opted to continue in CPF Scheme pursuant to the circular dated 02.07.1987. The learned Single Judge has also discussed the subsequent circular dated 08.02.1989 and has rightly come to the conclusion that the said circular was



issued to enable those employees who under the circular dated 02.07.1989 had expressly given their option to continue under the CPF Scheme and thereafter intended to be governed by the GPF and Pension scheme.

19. The learned Single Judge has discussed the judgment of this Court in *Dr. R.N. Virmani and Ors. University of Delhi and Anr. and other connected matters, W.P.(C) 1490/2006*, decided on 30.04.2014 and also the judgment of the Bombay High Court in the case of *Amita Ajit Desai & Ors. v. Union of India & Ors., W.P. No. 1331/2017*, decided on 17.01.2019. The learned Single Judge while passing the impugned judgment has also noticed that against the judgment of the Bombay High Court in *Amita Ajit Desai* (supra), the SLP preferred before the Apex Court was also rejected.

20. In *Dr. R.N. Virmani* (supra), it has categorically been held that a perusal of the circular dated 01.05.1987, which was issued in respect of the employees of the Central Government, as also the format appended thereto, which was to be filled in for the purpose of exercising option under the said circular, would show that the only option which had to be exercised was in respect of continuation by an employee under the CPF Scheme and further that the employee was not required to submit any form if he wanted to be covered under the Provident Fund and Pension Scheme.

21. We may also note that the circular dated 02.07.1987 was issued on the lines of the Office Memorandum dated 01.05.1987 issued by the Central Government for the benefit of its employees. In *Dr. R.N. Virmani* (supra), University of Delhi, vide notification dated 25.05.1987 had adopted the Office Memorandum issued by the Government of India, dated 01.05.1987.



The learned Single Judge has recorded a finding that the said Office Memorandum dated 01.05.1987 clearly applies to all employees who were beneficiaries of the CPF Scheme on 01.01.1986 and that all such employees who were CPF beneficiaries would be deemed to have come over to Pension Scheme unless the employee concerned submitted his or her option to continue with the CPF Scheme.

22. We are in complete agreement with the impugned judgment where the learned Single Judge has placed reliance on the judgment of this Court in *Dr. R.N. Virmani* (supra).

23. Much emphasis was laid on behalf of the appellant on the judgment of Hon'ble Supreme Court in *KVS & Ors v. Jaspal Kaur & Ors.*, (2007) 6 SCC 13. However, the facts of the said case are distinguishable and distinct from the facts of the instant case inasmuch as, in *Jaspal Kaur* (supra), the employee concerned had given a letter dated 15.03.1997 where the employee is said to have categorically stated that she was contributing towards CPF. She also had disclosed her CPF account number. Though, this fact was disputed by the employee concerned, however, the Hon'ble Supreme Court came to the conclusion that even though the employer (Kendriya Vidyalaya Sangathan) was not able to produce the original option form which was indicative of the fact that the employee was desirous of continuing under the CPF Scheme, however, the attendant circumstances showed that she had chosen to remain under the CPF Scheme whereas in the instant case, none of the employees had ever given their option pursuant to the circular dated 02.07.1987 to continue to be covered under the CPF



2026:DHC:2877-DB



Scheme. Thus, the reliance placed by the learned counsel for the appellant in *Jaspal Kaur* (supra) does not improve the case of the appellant.

24. For the discussion made and reasons given above, we find ourselves in complete agreement with the judgment and order dated 05.07.2021, passed by the learned Single Judge which is under challenge herein.

25. Resultantly, the appeals are hereby dismissed. There shall be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

APRIL 07, 2026
N.Khanna